



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1 to 76

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The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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**Des Moines, IA 50319**  
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Dec. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
***May 18***	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
***June 29***	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sept. 14	Oct. 19	Jan. 16 '06
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
***Aug. 24***	Sept. 14	Oct. 4	Oct. 19	Oct. 21	Nov. 9	Dec. 14	Mar. 13 '06
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
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Oct. 21	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '06	Feb. 8 '06	May 8 '06
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Dec. 30	Jan. 18 '06	Feb. 22 '06	May 22 '06
***Nov. 16***	Dec. 7	Dec. 27	Jan. 11 '06	Jan. 13 '06	Feb. 1 '06	Mar. 8 '06	June 5 '06
Dec. 2	Dec. 21	Jan. 10 '06	Jan. 25 '06	Jan. 27 '06	Feb. 15 '06	Mar. 22 '06	June 19 '06
***Dec. 14***	Jan. 4 '06	Jan. 24 '06	Feb. 8 '06	Feb. 10 '06	Mar. 1 '06	Apr. 5 '06	July 3 '06
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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
3	Friday, July 15, 2005	August 3, 2005
4	Friday, July 29, 2005	August 17, 2005
5	Friday, August 12, 2005	August 31, 2005

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

\*\*\*Note change of filing deadline\*\*\*

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## PUBLIC HEARINGS

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>ADMINISTRATIVE SERVICES DEPARTMENT[11]</b>		
Department organization, 1.1, 1.4 IAB 7/6/05 <b>ARC 4290B</b> (See also <b>ARC 4291B</b> herein)	Conference Room 04, Level A – South Hoover State Office Bldg. Des Moines, Iowa	July 26, 2005 11 a.m.
Payroll deduction for tuition program contributions, ch 45 IAB 7/6/05 <b>ARC 4292B</b> (See also <b>ARC 4293B</b> herein)	Conference Room 04, Level A – South Hoover State Office Bldg. Des Moines, Iowa	July 26, 2005 11:15 a.m.
Procurement of goods and services of general use, 105.7(1) IAB 7/6/05 <b>ARC 4294B</b> (See also <b>ARC 4295B</b> herein)	Conference Room 04, Level A – South Hoover State Office Bldg. Des Moines, Iowa	July 26, 2005 11:30 a.m.
<b>IOWA FINANCE AUTHORITY[265]</b>		
Qualified allocation plan for low-income housing tax credit program, 12.1, 12.2 IAB 6/22/05 <b>ARC 4281B</b> ( <b>ICN Network</b> )	Third Floor Ola Babcock Miller Bldg. Des Moines, Iowa	July 12, 2005 9 to 11 a.m.
	Room 12, High School 819 N. 25th St. Fort Dodge, Iowa	July 12, 2005 9 to 11 a.m.
	Regina (basement), Room 050 Mount Mercy College 1330 Elmhurst Dr. NE Cedar Rapids, Iowa	July 12, 2005 9 to 11 a.m.
	Looft Hall Iowa Western Community College – 1 2700 College Rd. Council Bluffs, Iowa	July 12, 2005 9 to 11 a.m.
	Room 404 High School 601 W. Townline Rd. Creston, Iowa	July 12, 2005 9 to 11 a.m.
	Room 119, Kimberly Center 1002 W. Kimberly Davenport, Iowa	July 12, 2005 9 to 11 a.m.
	Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	July 12, 2005 9 to 11 a.m.
	Room 113, High School 1700 Fourth SE Mason City, Iowa	July 12, 2005 9 to 11 a.m.

**IOWA FINANCE AUTHORITY[265] (Cont'd)**  
**(ICN Network)**

Videoconferencing & Training Center Indian Hills Community College – 5 651 Indian Hills Dr. Ottumwa, Iowa	July 12, 2005 9 to 11 a.m.
Room 22, CYO Bldg. Bishop Heelan Catholic High School 1021 Douglas St. Sioux City, Iowa	July 12, 2005 9 to 11 a.m.
Small Meeting Room Public Library 415 Commercial St. Waterloo, Iowa	July 12, 2005 9 to 11 a.m.

**LABOR SERVICES DIVISION[875]**

Boilers and pressure vessels—fees, 200.4 IAB 6/8/05 <b>ARC 4219B</b>	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	July 6, 2005 8:30 a.m. (If requested)
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**MEDICAL EXAMINERS BOARD[653]**

Fees for physician licensure, 8.4, 9.5(1), 9.11(3), 9.13, 10.4(3) IAB 7/6/05 <b>ARC 4309B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	July 26, 2005 8 a.m.
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**NATURAL RESOURCE COMMISSION[571]**

Docks and other structures on public waters, ch 16 IAB 6/8/05 <b>ARC 4237B</b>	Community Room City Hall Clear Lake, Iowa	July 7, 2005 6 p.m.
	Gull Point State Park Lodge West Okoboji Lake Milford, Iowa	July 11, 2005 6 p.m.
	Auditorium Wallace State Office Bldg. Des Moines, Iowa	July 12, 2005 6 p.m.

**PHARMACY EXAMINERS BOARD[657]**

Electronic drug database program, adopt ch 13; 36.1(4) IAB 7/6/05 <b>ARC 4307B</b>	Conference Room, Suite E 400 SW Eighth St. Des Moines, Iowa	July 26, 2005 1 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Physical therapists—licensure and discipline, 200.1, 200.3(2), 200.6, 202.2(31), 203.3(2) IAB 6/22/05 <b>ARC 4259B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 12, 2005 9 to 10 a.m.
Physical therapists, amendments to chs 200, 203, 204 IAB 6/22/05 <b>ARC 4260B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 12, 2005 9 to 10 a.m.

**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

Occupational therapists, amendments to chs 206, 207, 210 IAB 6/22/05 <b>ARC 4258B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 12, 2005 9 to 10 a.m.
Occupational therapists— licensure and discipline, 206.3, 206.4, 207.3(2), 209.2(31) IAB 6/22/05 <b>ARC 4257B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 12, 2005 9 to 10 a.m.

**STATE PUBLIC DEFENDER[493]**

Appointment of counsel and approval of claims, 7.1, 12.1(1), 12.2(1), 12.4(4), 12.6(1), adopt ch 14 IAB 6/22/05 <b>ARC 4245B</b> (See also <b>ARC 4265B</b> )	Conference Room 424 Lucas State Office Bldg. Des Moines, Iowa	July 12, 2005 9 a.m.
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**CITATION of Administrative Rules**

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

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IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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## ARC 4290B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 1, “Department Organization,” Iowa Administrative Code.

The purpose of these amendments is to implement section 2 of 2005 Iowa Acts, House File 776, signed by the Governor on April 22, 2005, and to provide for initial implementation of 2005 Iowa Acts, House File 839, signed by the Governor on April 29, 2005. Section 2 of 2005 Iowa Acts, House File 776, allows the Director of the Department of Administrative Services to appoint a person in the Department to serve as the Chief Information Officer of the state. 2005 Iowa Acts, House File 839, creates the Technology Governance Board in place of the Information Technology Council. These amendments also reflect modification of the Department’s mission from one of focusing on implementing an organization to one of providing products and services. Part of the original mission statement has been used to develop the vision statement for the Department: to be a world-class organization that is customer-focused, innovative and efficient.

There will be a public hearing on July 26, 2005, at 11 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 26, 2005. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail [Carol.Stratemeyer@iowa.gov](mailto:Carol.Stratemeyer@iowa.gov).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4291B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 8A.103 and 2005 Iowa Acts, House File 776 and House File 839.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

## ARC 4292B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby gives Notice of Intended Action to adopt new Chapter 45, “Payroll Deduction for Tuition Program Contributions,” Iowa Administrative Code.

The purpose of this chapter is to implement 2005 Iowa Acts, House File 748, signed by the Governor on April 26, 2005. 2005 Iowa Acts, House File 748, establishes for state employees an optional payroll deduction for qualified tuition program contributions when at least 500 state employees request the deduction from the same eligible qualified tuition program. The requests for deduction must be made on forms prescribed by the payroll administrator. The tuition program representative and the centralized payroll administrator shall enter into an agreement delineating each party’s rights and responsibilities. Tuition program representatives may meet with employees at the workplace on nonwork time to obtain enrollees provided that the program representatives’ materials have been approved by the payroll administrator and that the program representatives have received all required permissions from the local facility manager to hold the meeting.

There will be a public hearing on July 26, 2005 at 11:15 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on July 26, 2005. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail [Carol.Stratemeyer@iowa.gov](mailto:Carol.Stratemeyer@iowa.gov).

These rules were also Adopted and Filed Emergency and are published herein as **ARC 4293B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2005 Iowa Acts, House File 748.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

**ARC 4294B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104, the Administrative Services Department hereby gives Notice of Intended Action to amend Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

The following amendments are intended to implement 2005 Iowa Acts, House File 814, signed by Governor Vilsack on May 3, 2005, and effective July 1, 2005. 2005 Iowa Acts, House File 814, adds enforcement conditions to provisions presently found in Iowa Code section 73.2 that require the posting of any request for bids or proposals on the official state Internet site operated by the Department of Administrative Services. State agencies are required to implement the requirements of these amendments by September 1, 2005.

There will be a public hearing on July 26, 2005, at 11:30 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 26, 2005. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail [Carol.Stratemeyer@iowa.gov](mailto:Carol.Stratemeyer@iowa.gov).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4295B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 73.2 and 8A.311 as amended by 2005 Iowa Acts, House File 814.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4286B****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 159.5(11), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to rescind Chapter 50, "Women, Infants, and Children/Iowa Farmers Market Nutrition Program," and adopt a new Chapter 50, "Women, Infants, and Children/Farmers' Market Nutrition Program and Senior Farmers' Market Nutrition Program," Iowa Administrative Code.

The purpose of this proposed rule making is to make changes in rules governing the administration of the Farmers' Market Special Supplemental Food Program and to include the provisions and rules governing the Senior Farmers' Market Nutrition Program in compliance with federal law.

Any interested person may make written suggestions or comments on the proposed rules prior to 4:30 p.m. on July 26, 2005. Such written material should be directed to Mike Bevins, State Horticulturist, Bureau of Horticulture and Farmers' Markets, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-4282 or by E-mail to [Mike.Bevins@idals.state.ia.us](mailto:Mike.Bevins@idals.state.ia.us).

No waiver provision is included in these proposed rules; however, the Department has a general rule which allows for waivers in appropriate cases. The waiver rule applies to these rules.

These proposed rules were also Adopted and Filed Emergency and are published herein as **ARC 4285B**. The content of that submission is incorporated here by reference.

These proposed rules are intended to implement Iowa Code chapter 159.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4282B****ARCHITECTURAL EXAMINING BOARD[193B]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 2, “Registration,” Iowa Administrative Code.

The amendment to Chapter 2 clarifies the Board’s adoption of the National Council of Architectural Registration Board’s (NCARB) rolling clock which limits the time allowed to successfully complete all sections of the Architect Registration Examination.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before July 26, 2005. Comments should be addressed to Glenda Loving, Architectural Examining Board, 1920 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to [glenda.loving@iowa.gov](mailto:glenda.loving@iowa.gov).

This amendment is intended to implement Iowa Code chapters 17A and 544A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend subrule 2.3(3) as follows:

**2.3(3)** To qualify for registration, all applicants shall pass all divisions of the ARE prepared and provided by NCARB. Applicants who have previously passed any portion of formerly required NCARB examinations will be granted credit for those portions passed in accordance with procedures established by NCARB. ~~Divisions of the examination may be passed or failed separately in accordance with procedures established by NCARB.~~ *Applicants who have passed one or more but not all divisions of the ARE by January 1, 2006, shall have five years to pass all remaining divisions. A passing grade for any remaining division shall be valid for five years, after which time the division must be retaken if all remaining divisions have not been passed. The rolling five-year period shall commence after January 1, 2006, on the date when the first passed division is administered. Applicants who have passed no divisions of the ARE by January 1, 2006, shall be governed by the above rolling five-year requirement. The rolling five-year period shall commence on the date when the first passed division is administered.*

**ARC 4338B****ENVIRONMENTAL PROTECTION COMMISSION[567]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives notice of extension through July 18, 2005, of the public comment period for the proposed rule making initiated in the Notice of Intended Action to amend Chapter 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 11, 2005, as **ARC 4158B**. The purpose of the rule making is to clarify that ordinary travel on an unpaved public road includes routine traffic and road maintenance activities. Scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface are considered to be road maintenance activities that are classified as ordinary travel. Pursuant to the original Notice of Intended Action, a public hearing was held on June 15, 2005.

The U.S. Environmental Protection Agency requested that the public comment period be extended by 30 days. The Department is responding to this request and is extending the public comment period to July 18, 2005. No other changes have been made to the original Notice of Intended Action.

No additional public hearings are scheduled. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515)242-5094; or by electronic mail to [christine.paulson@dnr.state.ia.us](mailto:christine.paulson@dnr.state.ia.us). All comments must be received on or before July 18, 2005.

**ARC 4336B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44, the Department of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” and Chapter 130, “General Provisions,” Iowa Administrative Code.

These amendments clarify the grounds for terminating social services and specify that clients will not be granted a hearing on an appeal of service termination when the reason for the action is that the Department no longer offers the service. Existing rules around this issue reference the Social Services Block Grant Preexpenditure Report (formerly the Title XX Plan), which at one time addressed all social services offered by the Department. Changes in service funding have reduced the applicability of this report to only a few services, so the report is no longer an effective vehicle for addressing service availability.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The impetus for this rule making comes from the mandated redesign of child welfare services, "Better Results for Kids," which has resulted in the Department's refocusing eligibility criteria and available services toward children at risk of repeated maltreatment. The Department has adopted a series of emergency rules limiting eligibility and services as part of the redesign: **ARC 4019B**, published in the Iowa Administrative Bulletin on March 2, 2005, **ARC 4138B**, published on May 11, 2005, and **ARC 4223B**, published June 8, 2005. Existing rules on service termination do not make clear that failure to meet eligibility criteria is grounds for terminating service, and that services can be eliminated other than through the Social Services Block Grant Pre-expenditure Report.

These amendments do not provide for waivers in specified situations because a waiver of grounds for termination and hearing policy would not be appropriate. If a service is no longer available through the Department, there is no remedy that a hearing can apply.

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4323B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4335B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services proposes to amend Chapter 36, "Facility Assessments," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments reflect Iowa's settlement with the federal Centers for Medicare and Medicaid Services (CMS) over the use of intergovernmental transfers in Medicaid. The amendments eliminate:

- Supplemental payments to physicians employed at publicly owned acute-care teaching hospitals, which was adopted in **ARC 2566B**, published in the Iowa Administra-

tive Bulletin on July 9, 2003, but has not been implemented, pending CMS approval. The Department plans to implement these payments for state fiscal years 2004 and 2005 only.

- The nursing facility quality assurance assessment, which was adopted in **ARC 3021B**, published in the Iowa Administrative Bulletin on December 10, 2003, but has not been implemented, pending CMS approval. The Department has no plans to implement this assessment.

- The high-cost adjustment for Iowa state-owned hospitals with more than 500 beds, which was adopted in **ARC 3461B**, published in the Iowa Administrative Bulletin on July 7, 2004, but has not been implemented, pending CMS approval. The Department plans to implement this adjustment for state fiscal year 2005 only.

These amendments implement a limit on payments to public hospitals and public nursing facilities to the facility's actual medical assistance program costs.

Existing mechanisms for hospitals to receive supplemental disproportionate-share and graduate medical education payments are replaced by new methodology.

These amendments do not provide for waivers in specified situations because all providers should be subject to the same payment methodologies.

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4322B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, sections 22, 35, 36, and 38.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4334B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 51, "Eligibility," Iowa Administrative Code.

In compliance with 2005 Iowa Acts, House File 825, section 108, these amendments change eligibility standards for the State Supplementary Assistance category of Medicare and Medicaid eligibles as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- The minimum income limit is lowered from 135 percent of the federal poverty level to 120 percent of the federal poverty level. This change will allow the Department to collect federal financial participation on the Medicare premiums it pays for additional Medicaid recipients.

- The Medicaid eligibility requirement is clarified to refer to full medical assistance benefits (as opposed to limited benefits, such as are available under IowaCare, the family planning waiver, or the Medicare savings program).

These amendments do not provide for waivers in specified situations because the changes are based on statutory language that the Department has no authority to waive.

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4321B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249.3 as amended by 2005 Iowa Acts, House File 825, section 108.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4333B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 825, section 29, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments:

- Implement the 3 percent increase in reimbursement rates for medical providers authorized by 2005 Iowa Acts, House File 825, section 29. This increase affects advanced registered nurse practitioners, ambulances, ambulatory surgical centers, audiologists, birth centers, chiropractors, clinics, community mental health centers, dental services, durable medical equipment and supply dealers, family planning clinics, hearing aid dispensers, home health agencies, inpatient and outpatient hospital services, payments to qualifying hospitals from the Graduate Medical Education and Disproportionate Share Fund, lead inspection agencies, maternal health centers, opticians, optometrists, orthopedic shoe dealers, physical therapists, physicians, podiatrists, the pharmacy dispensing fee, the maximum reimbursement rate for psy-

chiatric medical institutions for children, psychologists, rehabilitation agencies, rehabilitative treatment, screening centers, and the following home- and community-based waiver services: adult day care, personal emergency response systems, home health aides, homemakers, nursing care, respite, chore, home-delivered meals, transportation, nutritional counseling, assistive devices, senior companion, consumer-directed attendant care, counseling, case management, supported community living, supports to maintain employment, behavioral programming, family counseling and training, prevocational services, interim medical monitoring and treatment, and day habilitation.

- Provide that the percentage difference used to calculate the excess payment allowance for direct and indirect care in nursing facilities is set at 0%, effectively eliminating excess payment allowances, as required by 2005 Iowa Acts, House File 825, section 31.

- Update language on the basis of reimbursement for rehabilitative treatment services to reflect current practice.

To eliminate the high degree of repetition resulting from past efforts to standardize payment methodology for services offered under the six home- and community-based services waivers, these amendments collapse the separate lists of services for each waiver into a single combined list. Five lists are eliminated, and services from all waivers are added to the remaining list. The “new” language added for several types of facility respite providers and 11 other services does not represent a change in policy, except for the 3 percent rate increase as noted above.

These amendments do not provide for waivers in specified situations because they either benefit the affected providers or are based on statutory language that the Department does not have authority to waive.

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4318B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, House File 825, sections 29 and 31.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4337B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services terminates rule making on amendments to subrule 79.1(5) regarding changes in Medicaid reimbursement methodology for Iowa state-owned hospitals with more than 500 beds. Notice of Intended Action

HUMAN SERVICES DEPARTMENT[441](cont'd)

concerning these amendments was published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3452B**, and an Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on December 8, 2004, as **ARC 3880B**. In 2005 Iowa Acts, House File 841, the Iowa General Assembly has mandated different standards for hospital reimbursement, effective July 1, 2005, as published herein as Notice **ARC 4335B** and Adopted and Filed Emergency **ARC 4322B**. Therefore, the Department is terminating rule making on Notice **ARC 3452B**.

## ARC 4332B

### HUMAN SERVICES DEPARTMENT[441]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments make a technical change to the source of the data file used in determining Medicaid drug reimbursement. A new contract for pharmacy claims processing took effect on June 25, 2005, as part of the Iowa Medicaid Enterprise. The new vendor, GHS Data Management, uses data from Medi-Span as the reference for classification and pricing of drugs. The Department's previous vendor used data from First Data Bank. Since comparison of data from the two sources has revealed minimal differences, the Department has elected to change data sources. Conversion to a new data source would be costly for the new vendor and would delay the implementation of the contract beyond the expiration date of the existing contract.

These amendments do not provide for waivers in specified situations because the same data file should be used in all cases as a matter of equity and efficient administration.

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4317B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

## ARC 4331B

### HUMAN SERVICES DEPARTMENT[441]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments change the copayment requirements for drugs covered under the Medicaid program and clarify that copayments apply to all Medicaid-covered drugs.

The amendments increase from \$0.50 to \$1.00 the copayment for all brand-name drugs that cost the state \$10 or less. The copayment for higher-cost preferred brand-name drugs and generic drugs is also set at \$1.00, which represents a reduction of the copayment for some preferred brand-name drugs. Copayments for higher cost nonpreferred brand-name drugs remain unchanged. These changes avoid the previous higher copayments incurred by a member who switched to a brand-name drug to comply with the Department's Preferred Drug List.

These amendments do not provide for waivers in specified situations because the amounts are set by the General Assembly.

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4316B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 42.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4330B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services proposes to amend Chapter 85, “Services in Psychiatric Institutions,” and adopt new Chapter 92, “IowaCare,” Iowa Administrative Code.

Chapter 92 implements the expansion of the Iowa Medicaid program directed by 2005 Iowa Acts, House File 841. This legislation took effect on July 1, 2005, pending the approval of waivers of federal Medicaid requirements that the Department has submitted to the Centers for Medicare and Medicaid Services.

2005 Iowa Acts, House File 841, provides that inpatient and outpatient services at the state mental health institutes shall be covered services for adults. Previously coverage had been limited to persons under the age of 21, persons aged 65 or over, and persons covered through the Iowa Plan for Behavioral Health.

2005 Iowa Acts, House File 841, also creates a new Medicaid program called “IowaCare.” IowaCare extends limited Medicaid eligibility to:

- People aged 19 through 64 whose household income is less than 200 percent of the federal poverty level and who do not qualify under any other Medicaid coverage group.
- Pregnant women whose gross income is under 300 percent of the federal poverty level and whose allowable medical expenses bring their countable income to below 200 percent of the federal poverty level and to their newborn children.

Eligibility for IowaCare is determined on a 12-month basis, based on an applicant’s declared circumstances. Retroactive eligibility is limited to one month. Members must pay a premium for IowaCare coverage, based on 2 percent of the poverty-level increment if the household’s income is at or below 100 percent of the federal poverty level or 5 percent of the poverty-level increment if the household’s income is more than 100 percent of the federal poverty level. A member must pay for at least four months of premiums. On a month-by-month basis, a member may pay a zero premium due to hardship.

Medicaid services for IowaCare members in the 19-to-64 age group must be provided by a member of the IowaCare provider network, which is comprised of:

- Broadlawns Medical Center in Des Moines.
- The University of Iowa Hospitals and Clinics.
- The state mental health institutes at Cherokee, Clarinda, Independence, and Mount Pleasant, exclusive of the units providing substance abuse treatment, services to geropsychiatric patients, or treatment for sexually violent predators.

Under IowaCare, covered services are initially limited to the following services, as available from the network providers:

- Inpatient and outpatient hospital care.

- Physician and advanced registered nurse practitioner services.
- Certain dental services.
- Certain pharmacy services.
- Transportation to and from the network provider.

IowaCare places no obligation on the provider network to offer these services or to change the availability of services, including availability based on residence.

For IowaCare members qualifying as pregnant women, the covered services include pregnancy-related services and newborn care. Women who live in Cedar, Clinton, Iowa, Johnson, Keokuk, Louisa, Muscatine, Scott, or Washington County must receive these services from the University of Iowa Hospitals and Clinics. Women who live in other counties may receive these services from any provider participating in the Iowa Medicaid program.

IowaCare is not an entitlement program. Therefore, when available funds are committed before the end of the fiscal year, the program will be discontinued until funding is received for the next fiscal year. Approval of applications will be suspended, and applications may be approved for only partial benefits.

These amendments do not provide for waivers in specified situations. The Department has general procedures for requesting an exception to policy at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before August 15, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4315B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement 2005 Iowa Acts, House File 841, divisions I and II, and section 15, subsection 1.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

**ARC 4329B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 217.6 and 249A.4 and 2004 Iowa Acts, chapter 1175, section 112, the Department of Human Services proposes to adopt new Chapter 91, “Medicare Drug Subsidy,” Iowa Administrative Code.

These rules provide for state eligibility determination for a federal subsidy to reduce or eliminate costs associated with

## HUMAN SERVICES DEPARTMENT[441](cont'd)

the Medicare drug benefit created by Public Law 108-173, the Medicare Modernization Act of 2003. Under this legislation, state Medicaid agencies are required to accept applications for the Medicare drug subsidy, determine eligibility, and maintain cases for applicants who are determined eligible for the subsidy.

The subsidy itself is administered by the Social Security Administration and is not part of the Medicaid program. The Social Security Administration refers to the subsidy as "extra help for Medicare prescription drug costs." The subsidy is intended to assist low-income people with payment for premiums, copayments, deductibles, and coverage gaps in the new Medicare Part D benefit that is scheduled to take effect on January 1, 2006.

These rules do not provide for waivers in specified situations. Individuals who believe themselves disadvantaged by these procedural requirements may request a waiver under rule 441—1.8(17A,217). The Department has no authority to waive federal eligibility standards for the subsidy.

Any interested person may make written comments on the proposed rules on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These rules were also Adopted and Filed Emergency and are published herein as **ARC 4314B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These rules are intended to implement Iowa Code sections 217.6 and 249A.4 and Section 1935(a) of the Social Security Act (42 USC § 1396u-5).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4328B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2005 Iowa Acts, House File 825, section 29, the Department of Human Services proposes to amend Chapter 150, "Purchase of Service," and Chapter 156, "Payments for Foster Care and Foster Parent Training," Iowa Administrative Code.

These amendments:

- Clarify conditions for initiation of a contract proposal when the Department uses a request for proposal to select service providers.
- Allow the Department to require performance measures in a purchase of social service agency contract.

- Increase the maximum payments to social service providers (for adoption home studies, family planning, supervised apartment living, and shelter care) by 3 percent.

- Increase the foster family home payment schedule to 65 percent of the U.S. Department of Agriculture's estimate of the cost to raise a child in the Midwest.

- Change the payment provisions for shelter care by removing the option of payment of a monthly fixed sum and by substituting procedures for a guaranteed minimum payment as provided by the Department in a request for proposal.

- Remove obsolete language allocating child care funds for foster parents and requiring a custodial parent's signature to assign child support payments to the Department.

- Update organizational names and form references.

On April 15, 2005, the Department issued Request for Proposal BDPS-05-063 to select competitive bids for emergency juvenile shelter care. The intent of the request is to contract with a finite number of programs that will guarantee shelter care availability across Iowa and to provide a more stable source of income for those programs. The Department intends to award one-year contracts projected to begin on July 1, 2005, or August 1, 2005. The Department expects to contract for approximately 325 shelter beds statewide and to guarantee payment for approximately 240 beds. Contracts for shelter care services that were in effect for state fiscal year 2005 will not be renewed unless the program is a successful bidder under the request for proposal.

These amendments do not provide for waivers in specified situations. Individuals or agencies that believe themselves disadvantaged by these rules may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4313B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code sections 234.6 and 234.35 and 2005 Iowa Acts, House File 825, section 29.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4327B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 234.6 and 235A.14(1) and 2003 Iowa Acts, chapter 178, section 4, the Department of Human Services proposes to amend Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments conform child protective services rules to:

- The Department’s redesign of the state child welfare system, “Better Results for Kids,” by identifying new criteria for service eligibility after assessment and by making form changes to align documentation with practice. The criteria identify the most vulnerable children who are at the highest risk for abuse or reabuse and require that the families of those children be offered services by the Department. Families at lower risk of abuse are referred to a community care contractor.

- Amendments to Iowa Code chapter 235A made by 2005 Iowa Acts, Senate File 343, regarding access to child abuse information.

- Federal requirements for child protection services citizen review panels.

These amendments do not provide for waivers in specified situations because requirements for child abuse assessment and child abuse information are set by statute.

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4312B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code sections 232.67 to 232.77 and Iowa Code chapter 235A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

**ARC 4326B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 235B.6, the Department of Human Services proposes to amend Chapter 176, “Dependent Adult Abuse,” Iowa Administrative Code.

This amendment adds a court or administrative agency making a determination regarding an unemployment compensation claim for a person who is the subject of a dependent adult abuse report to the list of entities with access to dependent adult abuse information, as directed by 2005 Iowa Acts, Senate File 335. The need for access for this group occurs when the person seeking unemployment compensation was fired because of a founded adult abuse report.

This amendment does not provide for waivers in specified situations because access to dependent adult abuse information is set by statute, which the Department has no authority to waive.

Any interested person may make written comments on the proposed amendment on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 4311B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

This amendment is intended to implement Iowa Code section 235B.6 as amended by 2005 Iowa Acts, Senate File 335.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

**ARC 4325B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2005 Iowa Acts, House File 825, section 29, the Department of Human Services proposes to amend Chapter 185, “Rehabilitative Treatment Services,” Iowa Administrative Code.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments implement a 3 percent cost-of-living adjustment to reimbursement rates negotiated for rehabilitative treatment and supportive services, including family preservation, family-centered services, and foster care services. Most of the increases will be applied to a provider's negotiated rates as in effect on June 30, 2005. For family-centered relative home studies and community resource procurement services, the fixed fee stated in the rules is increased by 3 percent.

These amendments do not provide for waivers in specified situations because they benefit the affected providers.

Any interested person may make written comments on the proposed amendments on or before July 27, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4310B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code sections 234.6 and 234.35.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4309B****MEDICAL EXAMINERS  
BOARD[653]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby proposes to amend Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," and Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

The proposed amendments raise fees for the following types of physician licensure by the following amounts: initial licensure by \$50, special licensure by \$100, license renewal via on-line application by \$87.50, and license renewal via paper application by \$75. The fee to reinstate a license to active status within one year after becoming inactive will be raised by \$75, and the reinstatement penalty of \$125 will be eliminated. Reinstatement of a license to active status one year or more after becoming inactive will be raised by \$50.

The Board approved the amendments to Chapters 8, 9 and 10 during a telephone conference call on June 15, 2005.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on July 26, 2005. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners,

400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

There will be a public hearing on July 26, 2005, at 8 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **8.4(1)**, paragraphs "a," "c," "f," and "g," as follows:

a. Initial licensure, \$400 ~~\$450~~ plus the fee for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

c. Renewal of an active license to practice, \$425 ~~\$500~~ if renewal is made via paper application or \$312.50 ~~\$400~~ if renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months. A convenience fee will be charged for on-line renewal.

f. Reinstatement of a license to practice one year or more after becoming inactive, \$400 ~~\$450~~ plus the fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

g. Reinstatement of a license within one year of becoming inactive, ~~the renewal fee for the most recent license period plus a \$125 reinstatement penalty. The renewal fee is \$425 \$500~~ except when the license in the most recent license period had been granted for less than 24 months; ~~in~~ In that case, the ~~renewal reinstatement~~ fee is prorated according to the date of issuance and the physician's month and year of birth.

ITEM 2. Amend subrule **8.4(3)**, paragraph "a," as follows:

a. Application for a special physician license, \$200 ~~\$300~~ plus the fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

ITEM 3. Amend subrule **9.5(1)**, paragraph "a," as follows:

a. Pay a nonrefundable initial application fee of \$400 ~~\$450~~ plus the fee identified in 653—subrule 8.4(7) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 4. Amend subrule **9.11(3)**, paragraph "a," as follows:

a. The renewal fee is \$425 ~~\$500~~ if the renewal is made via paper application or \$312.50 ~~\$400~~ if the renewal is made via on-line application, *per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months. A convenience fee will be charged for on-line renewal.*

ITEM 5. Amend subrule **9.13(1)**, paragraph "a," as follows:

a. Fees for reinstatement within one year of the license's becoming inactive. ~~The fee shall include the renewal fee for~~

## MEDICAL EXAMINERS BOARD[653](cont'd)

the most recent license period plus \$125 reinstatement penalty. The ~~renewal~~ *reinstatement* fee is \$425 ~~\$500~~ except when the license in the most recent license period had been granted for less than 24 months; in that case, the ~~renewal~~ *reinstatement* fee is prorated according to the date of issuance and the physician's month and year of birth.

ITEM 6. Amend subrule **9.13(2)**, paragraph "**b**," as follows:

b. Pay the reinstatement fee of \$400 ~~\$450~~ plus the fee identified in 653—8.4(7) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks. No fee is required for reinstatement for those whose licenses became inactive between December 8, 1999, and July 4, 2001; however, the fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed.

ITEM 7. Amend subrule **10.4(3)**, paragraph "**a**," subparagraph **(1)**, as follows:

(1) Pay a nonrefundable special license fee of \$200 ~~\$300~~ plus the fee identified in 653—subrule 8.4(7) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks;

**ARC 4307B****PHARMACY EXAMINERS  
BOARD[657]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to adopt new Chapter 13, "Electronic Drug Database Program," and to amend Chapter 36, "Discipline," Iowa Administrative Code.

The amendments were approved at the June 7, 2005, regular meeting of the Board of Pharmacy Examiners.

Proposed new Chapter 13 provides for the establishment of a centralized electronic database containing records of controlled substances prescriptions dispensed by pharmacies to patients in Iowa. The rules define terms used in the chapter, identify data elements to be reported, and establish reporting requirements. Provisions regarding the confidentiality and limited release of records, including requirements for release of database information and records, are established. The rules provide for periodic review by the Board of database records and referral of database information upon a determination of probable cause to believe that a violation of law may have occurred. Procedures for correction of erroneous database records and periodic destruction of database records are established.

Item 2 establishes grounds for disciplinary action for a licensee's or registrant's failure to comply with provisions of new Chapter 13.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on August 2, 2005. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

A public hearing will be held at 1 p.m. on July 26, 2005, in the conference room at the office of the Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa, at which time persons may present their comments orally or in writing. At the hearing, persons will be asked to provide their names and addresses for the record and to confine their remarks to the subject of these rules.

Any person who intends to attend the public hearing and has special requirements such as hearing or mobility impairments should contact Terry Witkowski at (515)281-5944 to advise of specific needs.

These amendments are intended to implement Iowa Code sections 124.304, 124.306, 124.504, 124.509, 155A.12, 155A.13, 155A.35, and 272C.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt the following **new** 657—Chapter 13:

**CHAPTER 13****ELECTRONIC DRUG DATABASE PROGRAM**

**657—13.1(124,155A) Purpose.** These rules are intended to improve the state's ability to identify and stop the diversion and misuse of prescription drugs and controlled substances. The rules provide for an efficient and cost-effective record-keeping system that will not impede the appropriate medical usage of controlled substances and other drugs that have abuse potential. The record-keeping system will create an electronic drug database that may be used by health care providers to monitor the use of selected controlled substances and other drugs the board includes in the database pursuant to these rules. Information in the electronic database shall be collected and disseminated pursuant to these rules. The board may contract with a third party/private vendor to administer the electronic database.

These rules shall not apply to a prescriber furnishing, dispensing, supplying, or administering drugs to the prescriber's patient, or to dispensing by a licensed pharmacy for the purposes of inpatient hospital care, inpatient hospice care, or long-term residential facility patient care.

**657—13.2(124,155A) Definitions.** As used in this chapter:

"Board" means the board of pharmacy examiners.

"Central database information" or "EDDP information" means information submitted to and maintained by the electronic drug database program.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of division II of Iowa Code chapter 124.

"DEA" means the federal Drug Enforcement Administration.

"Dispenser" means a person who delivers to the patient, by or pursuant to the lawful order of a prescriber, a substance required to be reported to the electronic drug database program, but does not include:

## PHARMACY EXAMINERS BOARD[657](cont'd)

1. A licensed hospital pharmacy that distributes such a substance for the purposes of inpatient hospital care or the dispensing of prescriptions for such a substance at the time of discharge from such a facility;

2. A prescriber or other authorized person who administers such a substance for the purposes of outpatient care. This exception shall not apply to a pharmacy that administers such a substance, as directed by the prescriber, pursuant to a prescription;

3. A pharmacy that distributes such a substance for the treatment of a patient residing in a long-term care facility or hospice facility; or

4. A wholesale distributor of a selected substance.

“Electronic drug database program” or “EDDP” means a central database program established pursuant to these rules for the collection and maintenance of information and data regarding select prescription drugs and controlled substances dispensed to patients in Iowa.

“Nonidentifiable information” means information that is provided in a form and manner that prevents the identification of a prescriber, dispenser, or patient.

“Patient” means the person or animal that is the ultimate user of a drug for which a prescription is issued or for which a drug is dispensed.

“Prescriber” means a licensed health care professional with prescriptive authority.

**657—13.3(124,155A) Data reporting.** Each licensed pharmacy that dispenses any of the drugs identified in rule 13.4(124,155A) to patients in the state, and each licensed pharmacy located in the state that dispenses such drugs to patients inside or outside the state, unless specifically excepted in these rules, shall submit prescription information to the EDDP.

**13.3(1) Information required.** The following information shall be submitted to the EDDP regarding each prescription dispensed:

- a. DEA registration number of the dispensing pharmacy.
- b. Patient identification including name, address, and date of birth.
- c. DEA registration number of the prescriber.
- d. The date the prescription was issued by the prescriber.
- e. The date the prescription was dispensed.
- f. Identification of the dispensing as a new or a refill prescription.
- g. NDC number of the drug dispensed.
- h. Quantity of the drug dispensed.
- i. The number of days’ supply of the drug dispensed.
- j. Serial or prescription number assigned by the pharmacy.
- k. Source of payment for the prescription, identified at a minimum as either third-party payment or patient payment.

**13.3(2) Format required.** Information shall be electronically submitted in the format specified by the board unless the board has granted a waiver and approved an alternate format.

**13.3(3) Timely submission.** Information shall be timely submitted if information regarding prescriptions dispensed between the sixteenth and the end of a month is received no later than the fifth day of the following month and if information regarding prescriptions dispensed between the first and the fifteenth of a month is received no later than the twentieth day of the month, unless the board grants an extension. The board shall grant an extension if either of the following occurs:

- a. The pharmacy suffers a mechanical or electronic failure beyond the pharmacy’s control, or cannot meet the re-

quirements for timely submission for other reasons beyond the pharmacy’s control.

b. The EDDP is unable to receive electronic submissions.

**13.3(4) Entities exempt from reporting.** These rules shall not apply to a prescriber furnishing, dispensing, supplying, or administering drugs to the prescriber’s patient, or to a licensed pharmacy dispensing for the purposes of inpatient hospital care, inpatient hospice care, or long-term residential facility patient care.

**657—13.4(124,155A) Selected drugs.** The following prescription drugs or controlled substances and classes of prescription drugs or controlled substances shall be included in the EDDP.

1. Schedule II controlled substances as defined in Iowa Code section 124.206.

2. Schedule III controlled substances as defined in Iowa Code section 124.208.

3. Schedule IV controlled substances as defined in Iowa Code section 124.210.

4. Schedule V controlled substances as defined in Iowa Code section 124.212.

**657—13.5 through 13.7 Reserved.**

**657—13.8(22,124) Confidentiality.** Information contained in the EDDP and any information obtained from the EDDP is confidential medical information pursuant to Iowa Code sections 22.7 and 124.504, is not a public record, and is not subject to discovery, subpoena, or other means of legal compulsion for release except as provided in these rules.

**657—13.9(124,155A) Data access.** The board shall establish procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, and transmitted through the EDDP is maintained. Information from the EDDP may be released only as provided by these rules.

**13.9(1) Release to governmental regulators.** A person who is a designated representative of a governmental entity responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe or dispense drugs; who is involved in an investigation of a person licensed, regulated, or subject to discipline by the entity; and who is seeking access to information in the database that is relevant to the subject matter of the investigation may obtain relevant information pursuant to a written administrative subpoena identifying the information sought and the reason for the request.

**13.9(2) Release to law enforcement.** A federal, state, county, township, or municipal officer of this or any other state, or the United States, whose duty is to enforce the laws relating to prescription drugs and who is actively engaged in a specific investigation of a specific person and is seeking access to information in the database, may obtain relevant information pursuant to a court-ordered subpoena or warrant identifying the information sought and the reason for the request.

**13.9(3) Release to grand jury.** A properly convened grand jury may obtain relevant database information pursuant to a subpoena properly issued.

**13.9(4) Release to a health care provider.** A pharmacist or prescriber who requests the information and certifies in a form provided by the board that the purpose for the request is the provision of medical or pharmaceutical care to a patient of the pharmacist or prescriber may obtain relevant information regarding the provider’s patient.

## PHARMACY EXAMINERS BOARD[657](cont'd)

**13.9(5)** Release to a patient. An individual who requests the individual's own database information shall submit a written request for the information. The request shall identify the individual by name, address, and date of birth, and shall include a sworn statement, witnessed and attested by a notary public, that the requesting individual is the person identified in the request. The request shall include payment in the amount of \$20 to cover the costs associated with providing the requested information. A payment received pursuant to this subrule shall be considered a repayment receipt as defined in Iowa Code section 8.2.

**657—13.10(124,155A) Records.**

**13.10(1)** Requests for EDDP records. A record of each person or entity that requests information from the EDDP shall be maintained. The board may use the records to document and report statistics and law enforcement outcomes and to identify inappropriate access or other prohibited acts. Records of a person's requests for database information may be disclosed as follows:

a. Pursuant to a written administrative subpoena, a designated representative of a governmental entity that is responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe or dispense drugs who is involved in a specific investigation of the individual who submitted the request.

b. Pursuant to a written court-ordered subpoena or warrant, a federal, state, county, township, or municipal officer of this or any other state or the United States, whose duty is to enforce the laws relating to prescription drugs, and who is actively engaged in a specific investigation of the specific person who submitted the request.

**13.10(2)** Scheduled record destruction. Information collected for the EDDP shall be retained in the database for four years. The information shall then be destroyed unless a law enforcement agency or a governmental entity responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe or dispense drugs has submitted a written request to the board for retention of specific information. Such a request:

a. Shall be received by the board no less than 60 days prior to the scheduled record destruction date;

b. Shall identify the agency or governmental entity requesting retention of the records;

c. Shall be signed and dated by an officer authorized to sign on behalf of the agency or governmental entity;

d. Shall include a statement certifying justification for retention of the records;

e. Shall specify the length of time the agency or governmental entity requests the records be maintained; and

f. Shall identify the records the agency or governmental entity requests to be retained. Identification of records shall include the name, address, and date of birth of the subject of the records and shall include the range of dates encompassing the records to be maintained.

**657—13.11(124,155A) Release of nonidentifiable information.** Any person may request statistical, aggregate, or other nonidentifiable information from the database.

**13.11(1)** Request for information. A request for statistical, aggregate, or other nonidentifiable information shall be submitted to the board in writing; shall identify the individual submitting the request including the individual's name, address, and telephone number; and shall specifically identify the information sought and the intended use of the information. If the individual is submitting the request on behalf of a company, organization, association, or other entity, the re-

quest shall also identify the entity by name, address, and telephone number if different from the individual submitting the request, and the individual submitting the request shall be further identified by title. The request shall be dated and signed by the individual submitting the request.

**13.11(2)** Fee for nonidentifiable information. The board may charge a reasonable fee for the provision of information pursuant to this rule and may issue an invoice for an amount not exceeding the cost of providing the requested information. The board may require payment of the invoiced amount prior to release of the requested information. A fee charged pursuant to this rule shall be considered a repayment receipt as defined in Iowa Code section 8.2.

**657—13.12 through 13.14** Reserved.

**657—13.15(124,155A) General provisions.** Nothing in these rules shall require a pharmacist or prescriber to obtain information about a patient from the EDDP. Nothing in these rules shall prohibit a pharmacist or prescriber who requests and receives information from the EDDP consistent with the requirements of these rules from otherwise lawfully providing that information to any other authorized person for medical or pharmaceutical care purposes.

The board shall not charge a fee to a pharmacy, pharmacist, or prescriber for the transmission of data to the database nor for the receipt of information from the database.

**657—13.16(124,155A) Data review and referral.** The board or its designee may periodically review information in the EDDP. If the board determines, consistent with the board's authority under Iowa Code chapter 124 or 155A, that there is probable cause to believe that drug diversion or another violation of law may have occurred, the board may notify the appropriate law enforcement agency or the governmental entity responsible for the licensure, regulation, or discipline of a licensed health care professional, and may supply information from the database supporting the probable cause determination.

**657—13.17(124,155A) Correction or deletion of erroneous information.** Any person with knowledge of erroneous information submitted to or contained in the EDDP may contact the board and request that the erroneous information be corrected or deleted, as appropriate.

**13.17(1)** Initial report of error. Initial contact to report erroneous information may be in writing via regular mail, electronic mail, or facsimile transmission to the board office; may be in person at the board office; or may be by telephone to the board office. The board may require that a request for correction or deletion of EDDP information be submitted in writing.

**13.17(2)** Investigation of report. The board shall investigate a report of erroneous EDDP information to determine, if possible, the validity of the report of error, the source of the error, and whether or not the erroneous information is the result of a willful and knowing act intended to cause harm to the subject of the error.

**13.17(3)** Results of investigation. If the board finds that the report of erroneous information is valid, the board shall take appropriate action to correct or delete the erroneous information and shall inform the individual reporting the error of the action taken. If the board is unable to determine the validity of a reported error, the board shall inform the individual reporting the error. If, after a board finding of no error, the person who filed the report of error continues to maintain that the EDDP information is incorrect, the board will prominently note that fact in the EDDP records.

## PHARMACY EXAMINERS BOARD[657](cont'd)

**657—13.18(124,155A) Discipline.** The failure of a licensed pharmacist or prescriber to comply with the requirements of these rules may constitute grounds for disciplinary action against the pharmacist, the pharmacy, or the prescriber pursuant to 657—Chapter 36.

These rules are intended to implement Iowa Code sections 124.306, 124.504, 124.509, 155A.13, and 155A.35.

ITEM 2. Amend subrule **36.1(4)** by adding the following **new** paragraphs “**ag**,” “**ah**,” “**ai**,” “**aj**,” and “**ak**”:

ag. Willfully and knowingly failing to submit prescription information to the electronic drug database program as required by 657—Chapter 13, or knowingly and intentionally submitting prescription information known to the pharmacist to be false or fraudulent.

ah. Willfully and knowingly disclosing or attempting to disclose prescription information from the electronic drug database program established pursuant to 657—Chapter 13.

ai. Willfully and knowingly using, releasing, publishing, or otherwise making available to another person any personally identifiable information obtained from or contained in the electronic drug database program established pursuant to 657—Chapter 13.

aj. Obtaining or attempting to obtain, without lawful authority, information contained in the electronic drug database program established pursuant to 657—Chapter 13 or willfully and knowingly altering or destroying valid information contained in the electronic drug database program.

ak. A pharmacist or prescriber authorized to access or receive prescription information pursuant to the provisions of

657—Chapter 13 knowingly and intentionally disclosing confidential information obtained from the database to a person who is not authorized pursuant to 657—Chapter 13 to receive the information.

**NOTICE—USURY**

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

July 1, 2004 — July 31, 2004	6.75%
August 1, 2004 — August 31, 2004	6.75%
September 1, 2004 — September 30, 2004	6.50%
October 1, 2004 — October 31, 2004	6.25%
November 1, 2004 — November 30, 2004	6.25%
December 1, 2004 — December 31, 2004	6.00%
January 1, 2005 — January 31, 2005	6.25%
February 1, 2005 — February 28, 2005	6.25%
March 1, 2005 — March 31, 2005	6.25%
April 1, 2005 — April 30, 2005	6.25%
May 1, 2005 — May 31, 2005	6.50%
June 1, 2005 — June 30, 2005	6.25%
July 1, 2005 — July 31, 2005	6.25%

## ARC 4291B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 1, "Department Organization," Iowa Administrative Code.

The purpose of these amendments is to implement section 2 of 2005 Iowa Acts, House File 776, signed by the Governor on April 22, 2005, and to provide for initial implementation of 2005 Iowa Acts, House File 839, signed by the Governor on April 29, 2005. Section 2 of 2005 Iowa Acts, House File 776, allows the Director of the Department of Administrative Services to appoint a person in the Department to serve as the Chief Information Officer of the state. 2005 Iowa Acts, House File 839, creates the Technology Governance Board in place of the Information Technology Council. These amendments also reflect modification of the Department's mission moving from a focus on implementing the organization to one of providing products and services. Part of the original mission statement has been used to develop the vision statement for the Department: to be a world-class organization that is customer-focused, innovative and efficient.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable prior to the effective date in order to meet the July 1, 2005, effective date and because these amendments are simultaneously being proposed under Notice of Intended Action to allow for public comment.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments made effective on July 1, 2005, because 2005 Iowa Acts, House Files 776 and 839, became effective on that date and because prompt implementation of the amendments confers a benefit on state employees and the public.

These amendments are also published herein under Notice of Intended Action as **ARC 4290B** to allow public comment. These amendments became effective on July 1, 2005.

These amendments are intended to implement Iowa Code section 8A.103 and 2005 Iowa Acts, House File 776 and House File 839.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 11—1.1(8A) as follows:

**11—1.1(8A) Creation and mission.** The department of administrative services (DAS) ~~was established by the 80th General Assembly in 2003 Iowa Acts, House File 534 in Iowa Code chapter 8A. The department was created for the purpose of managing~~ *manages* and ~~coordinating~~ *coordinates* the major resources of state government, including the human, financial, physical and informational resources.

The ~~mission of the department is~~ *was created* to implement a world-class, customer-focused organization that provides a complement of valued products and services to the internal customers of state government.

*The mission of the department is to provide high-quality, affordable infrastructure products and services to its customers—Iowa state government and other government entities—in a manner that allows them to provide better service to the citizens of Iowa and support the state of Iowa in achieving economic growth.*

ITEM 2. Amend subrule 1.4(3), introductory paragraph, as follows:

**1.4(3)** Information technology enterprise. The mission of the information technology enterprise is to provide high-quality, customer-focused information technology services and business solutions to government and to citizens. The director appoints the *chief information officer for the state, who also serves as the chief operating officer of the enterprise.* The following divisions have been established within the information technology enterprise:

ITEM 3. Amend paragraph **1.4(3)"d"** by rescinding subparagraph **(1)** and adopting the following **new** subparagraph **(1)** in lieu thereof:

(1) Technology governance board. The technology governance board operates pursuant to 2005 Iowa Acts, House File 839.

ITEM 4. Amend paragraph **1.4(5)"a"** as follows:

a. *Director's office.* The director is the chief executive officer for the department ~~and the chief information officer for the state.~~ The director's central administration area provides support to the director and to the governmental and business operations of the department and its enterprises. The following functions are included in this area: general counsel; legislative liaison; rules administrator; strategic, performance, and business continuity planning; program oversight and accountability; and departmental and enterprise policy and standards development, ~~including enterprise information technology standards.~~

ITEM 5. Amend the implementation clause for rule **11—1.4(8A)** as follows:

These rules are intended to implement Iowa Code chapter 8A and sections 7E.5 and 17A.3 *and 2005 Iowa Acts, House File 776 and House File 839.*

[Filed Emergency 6/15/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4293B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby adopts new Chapter 45, "Payroll Deduction for Tuition Program Contributions," Iowa Administrative Code.

The purpose of this chapter is to implement 2005 Iowa Acts, House File 748, signed by the Governor on April 26, 2005. 2005 Iowa Acts, House File 748, establishes for state employees an optional payroll deduction for qualified tuition program contributions when at least 500 state employees request the deduction from the same eligible qualified tuition

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

program. The requests for deduction must be made on forms prescribed by the centralized payroll administrator. The tuition program representative and the centralized payroll administrator shall enter into an agreement delineating each party's rights and responsibilities. Tuition program representatives may meet with employees at the workplace on non-work time to obtain enrollees provided that the program representatives' materials have been approved by the centralized payroll administrator and that the program representatives have received all required permissions from the local facility manager to hold the meeting.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable prior to the effective date in order to meet the July 1, 2005, effective date and because this new chapter is simultaneously being proposed under Notice of Intended Action to allow for public comment.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the new chapter should be waived and this new chapter should be made effective on July 1, 2005, because 2005 Iowa Acts, House File 748, became effective on that date and because prompt implementation confers a benefit to state employees and the public.

This amendment is also published herein under Notice of Intended Action as **ARC 4292B** to allow public comment.

This amendment became effective on July 1, 2005.

This amendment is intended to implement 2005 Iowa Acts, House File 748.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is adopted.

CHAPTER 45  
PAYROLL DEDUCTION FOR  
TUITION PROGRAM CONTRIBUTIONS

**11—45.1(81GA,HF748) General provisions.** The state of Iowa may grant to a qualified tuition program the right to receive payments from a state officer or employee through payroll deduction upon presentation of a tuition program contribution authorization form signed by the state officer or employee.

**11—45.2(81GA,HF748) Definitions.** For the purpose of this chapter, the following definitions apply.

"Employee" means a permanent employee of the state of Iowa.

"Payroll system" means any one of the following:

1. State of Iowa centralized.
2. Department of transportation.
3. Iowa State University of Science and Technology.
4. State University of Iowa.
5. University of Northern Iowa.
6. Iowa Braille and Sight Saving School.
7. Iowa School for the Deaf.
8. Iowa state fair board.

"Qualified tuition program" means a program which meets the requirements of a qualified tuition program under Section 529 of the Internal Revenue Code.

**11—45.3(81GA,HF748) Tuition program qualifications.** To be eligible to receive contributions from state employees through payroll deductions, a tuition program must meet the requirements of a qualified tuition program under Section

529 of the Internal Revenue Code and must meet the requirements of this rule.

**45.3(1) Minimum number of participating employees.** The qualified tuition program must have and maintain the participation of 500 or more state employees.

**45.3(2) Qualification process.**

a. Written agreement. The qualified tuition program representative must enter into a written agreement with the centralized payroll administrator. The agreement shall delineate each party's rights and responsibilities. At the same time, the qualified tuition program representative must provide a template of the program's enrollment form to the centralized payroll administrator.

b. Forms. Payroll deductions for contributions to a qualified tuition program must be authorized on enrollment forms approved by the centralized payroll administrator.

c. Payroll deduction requests. A state employee must request payroll deduction for tuition program contributions in writing on the approved enrollment form and provide the form to the appointing authority.

d. Participating employee list. A tuition program seeking to be eligible must supply the centralized payroll administrator with a certified list of all state employees for whom tuition contribution payroll deductions are sought. The list of names of employees who have authorized a deduction, in alphabetical order for each affected payroll system, shall also contain each employee's date of birth, employing agency name, work telephone number, and the last four digits of the employee's social security number.

e. Multiple payroll systems. For determining the qualified tuition program's eligibility, a list of employees requesting payroll deduction for contributions to the qualified tuition program shall be provided by the qualified tuition program to the centralized payroll administrator in an acceptable electronic format. The centralized payroll administrator will determine whether the qualified tuition program has attained the minimum 500 participating employees by counting employees from all payroll systems combined. The centralized payroll administrator will notify the other payroll systems of the eligibility determination for a qualified tuition program.

**11—45.4 Reserved.**

**11—45.5(81GA,HF748) Deduction limits and frequency.** An authorized deduction must be a minimum of \$1. The frequency of the deductions must be compatible with the affected payroll system. All of an employee's payroll deductions must be made in equal amounts on a monthly basis or be made on a basis compatible with the payroll system. The deduction will be made only for the amount of the tuition contribution and shall not include amounts for any other purpose.

**11—45.6(81GA,HF748) Distribution of literature.** The state of Iowa will not distribute with payroll materials literature soliciting tuition program contribution deductions or distribute any other materials for a qualified tuition program.

**11—45.7(81GA,HF748) Number of contributions.** Each payroll system must allow each employee the opportunity to make tuition contribution payroll deductions to any combination of qualified tuition programs, up to the limit that has been set by the applicable payroll system.

**11—45.8(81GA,HF748) Cash contributions.** No cash contributions will be accepted or administered through the payroll process or system.

**11—45.9(81GA,HF748) Terminations.** An employee wishing to terminate the deduction shall give 30 days' notice

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

in writing to the department or agency in which the employee works or, in the case of regents institutions, to the officer in charge of the payroll system through which the employee is paid.

**11—45.10(81GA,HF748) Remittance.**

**45.10(1)** The officer in charge of the payroll system must send the monthly payment for the benefit of the employee's account to each eligible qualified tuition program no later than 30 days following the payroll deduction from the wages of the employee.

**45.10(2)** The deduction may be made even though the compensation paid to an employee is reduced to an amount below the minimum prescribed by law. Payment to an employee of compensation less the deduction shall constitute a full discharge of claims and demands for services rendered by the employee during the period covered by the payment.

**45.10(3)** Support documentation is limited to a listing of employees and the amount deducted for each such employee.

**11—45.11(81GA,HF748) Unapproved solicitation prohibited.** Salespersons or agents for the qualified tuition program must follow all applicable rules prohibiting solicitation on state property. The designated program representative may schedule presentations of marketing and informational materials provided that the centralized payroll administrator has given written approval of said materials and provided that applicable rules are followed concerning approval of the date, time, and location of such presentations.

**11—45.12(81GA,HF748) Annual review of participating employees.** During September of each year, each participating qualified tuition program must supply the centralized payroll administrator with a certified list, in an acceptable electronic format, of all state employees who have a tuition contribution deduction through any state payroll system. The list must contain the same information as required in 45.3(2)"d" and will be used by the centralized payroll administrator to determine whether the qualified tuition program has 500 employees participating in the program.

The centralized payroll administrator will provide a copy of the certified list for each payroll system to the officer in charge of that payroll system for verification of employee status.

If the minimum qualification is not being maintained, written notification will be provided to the qualified tuition program, giving the qualified tuition program 90 days to meet the minimum qualification. If, at the end of the 90-day period, the minimum qualification has not been attained, the tuition contribution deduction for all participating employees in that qualified tuition program will be terminated.

**11—45.13(81GA,HF748) Termination of qualified tuition program participation.** If the centralized payroll administrator finds that a qualified tuition program is not complying with the rules in this chapter or the agreement made with the centralized payroll administrator, or if the program is not operating in a manner that the centralized payroll administrator determines to be in the best interest of the state or its employees, the department of administrative services reserves the right to terminate a qualified tuition program's participation in the payroll deduction program.

These rules are intended to implement 2005 Iowa Acts, House File 748.

[Filed Emergency 6/15/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4295B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 8A.104, the Administrative Services Department hereby amends Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

The following amendments are adopted to implement 2005 Iowa Acts, House File 814, signed by Governor Vilsack on May 3, 2005, and effective July 1, 2005. 2005 Iowa Acts, House File 814, adds enforcement conditions to provisions presently found in Iowa Code section 73.2 which require the posting of any request for bids or proposals on the official state Internet site operated by the Department of Administrative Services. State agencies are required to implement the requirements of these amendments by September 1, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable prior to the effective date in order to meet the July 1, 2005, effective date and because these amendments are simultaneously being proposed under Notice of Intended Action to allow for public comment.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date should be waived and these amendments made effective on July 1, 2005, because 2005 Iowa Acts, House File 814, became effective on that date and because prompt implementation confers a benefit to the public.

These amendments are also published herein under Notice of Intended Action as **ARC 4294B** to allow public comment.

These amendments became effective on July 1, 2005.

These amendments are intended to implement Iowa Code sections 73.2 and 8A.311 as amended by 2005 Iowa Acts, House File 814.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule 105.7(1) as follows:

**105.7(1) General notification.**

*a. Bid posting.* The department and each state agency shall provide notice of solicitations. The department and each state agency shall post notice of every formal competitive bidding opportunity and proposal to the official Internet site, <http://bidopportunities.iowa.gov>, operated by the department of administrative services in accordance with Iowa Code sections 73.2 and 8A.311 as amended by 2005 Iowa Acts, House File 814. Instead of direct posting, the agency may add a link to <http://bidopportunities.iowa.gov> that connects to the Web site maintained by the agency on which re-

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

quests for bids and proposals for that agency are posted. For the purposes of this subrule, a formal solicitation is as defined by the appropriate procurement authority. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state Internet site operated by the department of administrative services.

b. *Other forms of notice.* ~~Such notice~~ Notice of competitive bidding opportunities and proposals may be provided electronically, including on the state's Web site in accordance with 2002 Iowa Acts, chapter 1072, by telephone or fax, in print, or by other means that give reasonable notice to vendors, in addition to the posting or linking of formal solicitations to the official Internet site operated by the department of administrative services.

c. *Posting of requests for architectural and engineering services.* A request for proposals for architectural or engineering services may be posted electronically by a department or state agency in addition to other methods of advertisement required by law.

d. *Bids voided.* A formal competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this subrule is void and shall be rebid. This requirement shall be effective for formal competitive bidding opportunities issued on or after September 1, 2005.

ITEM 2. Amend the implementation clause for **11—Chapter 105** as follows:

These rules are intended to implement Iowa Code Supplement sections 8A.201 to 8A.203, 8A.206, 8A.207, 8A.301, 8A.302, 8A.311 as amended by 2005 Iowa Acts, House File 814, 8A.341 to 8A.344, 73.1 and 73.2 and 2004 Iowa Acts, House File 2520.

[Filed Emergency 6/15/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4285B

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 159.5(11), the Department of Agriculture and Land Stewardship hereby rescinds Chapter 50, "Women, Infants, and Children/Iowa Farmers' Market Nutrition Program," and adopts a new Chapter 50, "Women, Infants, and Children/Farmers' Market Nutrition Program and Senior Farmers' Market Nutrition Program," Iowa Administrative Code.

The purpose of this rule making is to make changes in rules governing the administration of the farmers' market special supplemental food program and to include provisions governing the senior farmers' market nutrition program in compliance with federal law.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable. The Department has already received substantial comment regarding many of the rules. Other rules are mandated by federal law in order for Iowa to participate in the programs. Notice and public participation would needlessly delay making the required changes in the programs.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived and the rules should be made effective upon filing with the Administrative Rules Coordinator. The rules confer a benefit on recipients of WIC and senior vouchers who participate in the programs and to some producers who want to sell eligible food under the programs. Immediate implementation will allow these benefits to begin to accrue during the summer months which are the primary months for the programs.

No waiver provision is included in these rules; however, the Department has a general rule which allows for waivers in appropriate cases. The waiver rule applies to these rules.

These rules are also published herein under Notice of Intended Action as **ARC 4286B** to allow for public comment.

These rules are intended to implement Iowa Code chapter 159.

These rules became effective June 10, 2005, upon filing.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following rules are adopted.

Rescind **21—Chapter 50** and adopt in lieu thereof the following **new** chapter:

#### CHAPTER 50

#### WOMEN, INFANTS, AND CHILDREN/FARMERS' MARKET NUTRITION PROGRAM AND SENIOR FARMERS' MARKET NUTRITION PROGRAM

**21—50.1(159) Authority and scope.** This chapter establishes procedures to govern the administration of a farmers' market special supplemental food program by the department of agriculture and land stewardship for implementing the applicable agreement and guidelines set forth by the United States Department of Agriculture, Food and Nutrition Service Agreement, in accordance with 1990 Iowa Acts, chapter 1260, section 1, subsection 3.

Information may be obtained by contacting the Horticulture and Farmers' Market Bureau, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, telephone (515)281-5321.

**21—50.2(159) Severability.** If any provision of a rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and, to this end, the provisions of these rules are severable.

**21—50.3(159) Definitions.** For the purposes of this chapter:

"Application" means a request made by an individual to the department for vendor certification in the FMNP/SFMNP on a form provided by the horticulture and farmers' market bureau of the department.

"Authorized CSA" means a community supported agriculture program that is authorized by the department for the exchange of FMNP/SFMNP funds for eligible foods.

"Authorized farmers' market" means a farmers' market site authorized by the department for the exchange of vouchers for eligible foods.

"Authorized farmstand" means a farmstand site authorized by the department for the exchange of vouchers for eligible foods.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

“Certified vendor” means an individual who has met all FMNP/SFMNP conditions as outlined by the department and who is guaranteed payment on all vouchers accepted, provided compliance is maintained by that individual regarding all FMNP/SFMNP rules and procedures as outlined in the vendor certification handbook. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be certified to participate in the FMNP/SFMNP, except individuals employed by a farmer otherwise qualified under these rules.

“Certified vendor identification card” means a department-issued card that shall be presented by the certified vendor during each occurrence of voucher deposit in the financial institution of certified vendor choice. This card shall remain the sole property of the department with forfeiture by the certified vendor to the department in the event of disqualification or suspension.

“Certified vendor identification sign” means department-issued signage which shall be clearly displayed by the certified vendor at all times the vendor accepts or intends to accept vouchers in an authorized farmers’ market/farmstand. Signs shall remain the sole property of the department with forfeiture by the certified vendor to the department in the event of disqualification or suspension.

“Certified vendor number” means a unique identification number issued for a designated period by the department and assigned to an individual whom the department has identified as a certified vendor. The certified vendor number shall be affixed to the certified vendor identification card and the certified vendor identification sign, and the certified vendor shall stamp the number on each voucher that is submitted for deposit. An individual shall be assigned no more than one certification number for any designated period.

“Certified vendor stall” means all of the area in an authorized farmers’ market that is dedicated to a certified vendor for the purpose of displaying and offering product for sale. Certified vendors are permitted only one certified vendor stall per market. The only exceptions shall be:

1. If the certified vendor elects not to promote any of the area as FMNP/SFMNP for an entire farmers’ market day; or
2. If the certified vendor elects to exclude a portion of the space by maintaining a distance of separation from the certified vendor stall by a minimum of two farmers’ market vendors who are neither affiliated with nor related to the certified vendor and who are actively participating in the farmers’ market on the given day. An excluded area shall be operated independently of the certified vendor stall.

These exceptions shall hold only when the vendor neither accepts nor intends to accept vouchers.

“Certified vendor stamp” means a department-issued stamp of the certified vendor number.

“Community supported agriculture” means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer’s crop(s) for that season.

“Days” means calendar days.

“Department” means the Iowa department of agriculture and land stewardship.

“Designated distribution site” means a site authorized by the department for distribution of vouchers by the local agency.

“Distribution” means the process outlined by the department and the means by which local agencies actually dispense vouchers to eligible recipients.

“Eligible foods” means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consump-

tion. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes.

“Farmers’ market” means a cooperative or nonprofit enterprise or association that consistently occupies a given site throughout the season, which operates principally as a common marketplace for a group of farmers to sell locally grown fresh produce directly to consumers, and where the majority of products sold are produced by the participating farmers with the sole intent and purpose of generating a portion of household income.

“Farmstand” means a consistent site throughout the season, in which a single individual farmer sells the farmer’s produce directly to consumers.

“FMNP” means the women, infants, and children farmers’ market nutrition program.

“Fresh produce” means fruits and vegetables that have not been processed in any manner. This term does not include such items as dried fruits and vegetables, potted or dried herbs, wild rice, nuts of any kind including raw nuts, popcorn, fruit or vegetable plants/seedlings, dried beans/peas, seeds/grains, flowers, honey, maple syrup, cider, eggs, meat, cheese, and seafood.

“Local agency” means a nonprofit entity that certifies eligible recipients, issues FMNP/SFMNP vouchers, arranges for the distribution of eligible foods through CSA programs, or provides nutritional education or information on operational aspects of the FMNP/SFMNP to recipients and which has entered into a contract with the department.

“Locally grown” means produce that has a traceable point of origin either within Iowa or in a neighboring state a neighboring state in a county adjacent to Iowa’s border.

“Posted hours and days” means the operational time frames stated in assurances submitted by a representative, who has the legal authority to obligate the farmers’ market/farmstand, which include a beginning and an ending time and date for each year of operation.

“Proxy” means an individual authorized by an eligible recipient to act on the recipient’s behalf, including application for, receipt of, or use of vouchers or acceptance of SFMNP foods provided through a CSA program as long as the benefits are ultimately received by the recipient. Minors shall not be used as proxies.

“Recipient” means a person chosen by the Iowa department of agriculture and land stewardship to receive FMNP/SFMNP benefits.

1. To receive FMNP benefits, such person must be a woman, infant over four months of age, or child who receives benefits under the WIC program or is on the waiting list to receive benefits under the WIC program.

2. To receive SFMNP benefits, such person must meet the senior eligibility criteria of the SFMNP in Part 249.6 of Subpart C of Title 7 Code of Federal Regulations as of May 26, 2005.

“Season” means a clearly delineated period of time during a given year that has a beginning date and ending date, as specified by the department, which correlates with a major portion of the harvest period for locally grown fresh produce.

“Secretary” means the secretary of agriculture for the state of Iowa.

“Service area” means the geographic area that encompasses all of the designated distribution sites and authorized farmers’ markets, farmstands, and CSAs within Iowa for a designated period.

“SFMNP” means the senior farmers’ market nutrition program.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

“Shareholder” means an SFMNP recipient for whom a full or partial share in a community supported agriculture program has been purchased by the department, and who receives SFMNP benefits in the form of actual eligible foods rather than vouchers that must be exchanged for eligible foods at farmers’ markets or farmstands.

“USDA-FNS” means the United States Department of Agriculture-Food and Nutrition Service.

“Vendor certification handbook” means a publication by the department that is based on USDA-FNS regulations and guidelines, addresses all FMNP/SFMNP rules and procedures applicable to a certified vendor, and provides the basis for vendor training. A copy of the publication shall be issued to each individual after certification training. New editions supersede all previous editions.

“Voucher” means a negotiable instrument issued by the department to recipients that is redeemable only for eligible foods from certified vendors at authorized farmers’ markets/farmstands with a limited negotiable period that directly correlates to the season designated by the department.

“WIC” means the Special Supplemental Food Program for Women, Infants and Children, as administered by the Iowa department of public health.

**21—50.4(159) Program description and goals.** The women, infants, and children/farmers’ market nutrition program (FMNP) and the senior farmers’ market nutrition program (SFMNP) are jointly funded by the state of Iowa and the United States Department of Agriculture.

**50.4(1)** The dual purposes of the FMNP are:

a. To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers’ markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or are on the waiting list for the WIC program, and

b. To expand the awareness of, use of and sales at farmers’ markets.

**50.4(2)** The purposes of the SFMNP are:

a. To provide resources in the form of fresh, nutritious, unprepared locally grown fruits, vegetables and herbs from farmers’ markets, roadside stands, and community supported agriculture (CSA) programs to low-income seniors;

b. To increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers’ markets, roadside stands, and CSAs; and

c. To develop or aid in the development of new and additional farmers’ markets, roadside stands, and CSAs.

**21—50.5(159) Administration and agreements.**

**50.5(1)** The program shall be administered by the secretary or by the secretary’s designee.

**50.5(2)** The department shall maintain all conditions as outlined in the farmers’ market nutrition program/senior farmers’ market nutrition program state plan submitted to USDA-FNS.

**21—50.6(159) Distribution of benefits.**

**50.6(1)** Iowa department of public health WIC client screening processes and records shall provide the basis for identifying recipients eligible for receipt of FMNP vouchers. The department may contract with local agencies to certify eligible recipients and distribute SFMNP vouchers. Senior recipient eligibility criteria shall conform to Part 249.6 of Subpart C of Title 7 Code of Federal Regulations as of May 26, 2005.

**50.6(2)** Local agencies shall distribute vouchers at designated distribution sites to recipients in the manner specified

by the department in the procedures guide for distribution site staff. Local agency services shall include, but not be limited to, ensuring that:

a. Each recipient is issued vouchers during each distribution as authorized by the department.

b. The voucher serial numbers issued to the recipient correspond to the numbers in the distribution registry.

c. A proxy is allowed to act on behalf of a recipient.

d. Each recipient is provided a thorough explanation of program guidelines and recipient responsibility as outlined by the department.

e. All FMNP/SFMNP support materials are put into use as outlined by the department.

f. Accurate and complete records of all related FMNP/SFMNP activities in the possession of a local agency are maintained and retained for a minimum of three years following the date of submission of the final expenditure report for the period to which the report pertains. In the event of litigation or audit findings, the records shall be retained until all issues arising from such actions have been resolved or until the end of the prescribed retention period, whichever is later.

g. All agency records pertaining to this program are made available for inspection to representatives of USDA, the Comptroller General of the United States, the state auditor, the department, and other agencies working under contract with the department as necessary, at any time during normal business hours, and as frequently as is deemed necessary for inspection and audit. Otherwise, confidentiality of personal information on all recipients participating in the program shall be maintained at all times.

**21—50.7(159) Recipient responsibilities.** Recipients shall be responsible for, but not limited to, all of the following:

1. Qualifying under FMNP/SFMNP guidelines and attending a designated distribution site when vouchers are distributed.

2. Properly signing a voucher(s) at time of use in the presence of the certified vendor who accepts a voucher in exchange for eligible foods.

3. Using vouchers only to purchase eligible foods from certified vendors who display certified vendor identification signs at authorized farmers’ markets/farmstands.

4. Redeeming vouchers on or before the expiration date printed on the face of the voucher, or surrendering all claim to the value of vouchers that remain unredeemed.

5. Ensuring vouchers received are not assigned to any other party other than to a proxy.

6. Reporting violations or problems to the department or the local agency.

7. Reporting all incidents of lost or stolen vouchers to the local agency.

**21—50.8(159) Farmers’ market, farmstand, and community supported agriculture (CSA) authorization and priority.**

**50.8(1)** A farmers’ market/farmstand/CSA shall be eligible for authorization based in part upon the submission of assurances by a representative who has the legal authority to obligate the farmers’ market/farmstand/CSA. Farmers’ market/farmstand/CSA assurances shall be submitted in a manner outlined by the a department and shall provide evidence of willingness by a person(s) associated with the farmers’ market/farmstand/CSA to implement all FMNP/SFMNP requirements.

**50.8(2)** Assurances submitted by a farmers’ market/farmstand shall include, but not be limited to, all of the following:

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

- a. The name(s) of certified vendor participant(s).
- b. Posted hours and days of operation to be maintained each week, specifically detailed to cover any anticipated fluctuations in operations over the course of the season. A farmers' market/farmstand must be actively operating a minimum of two consecutive hours each week.
- c. Season of operation which ensures the farmers' market/farmstand is actively operating on the same day, on a weekly basis, for a majority of the weeks of the season.
- d. Accessibility and consistency of farmers' market/farmstand site over the course of the season.
- e. Local rules that do not overly restrict the number of certified vendors who may participate in the farmers' market or operate a farmstand.
- f. Department is notified if the farmers' market/farmstand ceases operation prior to the end of the authorization period.

**50.8(3)** A CSA program shall:

- a. Provide such information as the department may require for its periodic reports to USDA-FNS.
- b. Ensure that SFMNP recipients receive only eligible foods.
- c. Provide eligible foods to SFMNP shareholders at or less than the price charged to other customers.
- d. Ensure that the shareholders receive eligible foods that are of equitable value and quantity to their share.
- e. Ensure that all funds from the department are used for planting of crops for SFMNP shareholders.
- f. Provide to the department access to a tracking system that determines the value of the eligible foods provided and the remaining value owed to each SFMNP shareholder.
- g. Ensure that SFMNP shareholders/authorized representatives provide written acknowledgment of receipt of eligible foods.
- h. Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities for such procedures.
- i. Agree to be monitored for compliance with SFMNP requirements, including both overt and covert monitoring.
- j. Be accountable for actions of farmers or employees in the provision of eligible foods and related activities.
- k. Offer SFMNP shareholders the same courtesies as other customers.
- l. Notify the department immediately when the CSA program is experiencing a problem with its crops and may be unable to provide SFMNP shareholders with the complete amount of eligible foods agreed upon between the CSA and the department.
- m. Comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Department of Agriculture regulations on nondiscrimination contained in Parts 15, 15a and 15b and FNS instructions as outlined in Part 249.7 of Title 7 Code of Federal Regulations, as of May 26, 2005.
- n. Notify the department if any CSA program ceases operation prior to the end of the authorization period.

**50.8(4)** The department shall give priority to a farmers' market/farmstand/CSA with previous involvement in FMNP/SFMNP, provided the farmers' market/farmstand/CSA does not have a high incidence of certified vendor non-compliance, suspensions, or disqualifications.

**50.8(5)** A principal factor in determining farmers' market authorization shall pertain to the number of eligible applications received by the department prior to April 15 that indicate the intent to participate in the given farmers' market. A

standard of three eligible certified vendor applications, indicating intent to participate in the farmers' market for the majority of weeks of the season, is required for a farmers' market to receive authorization.

**50.8(6)** The number of farmers' markets/farmstands/CSAs authorized for publication in the directory shall be determined by the department no later than May 1 prior to each season. Additional farmers' markets/farmstands/CSAs may be authorized no later than June 30.

**50.8(7)** An authorized farmers' market must ensure that at least one certified vendor remains on site during the posted days and hours of market operation. Failure to comply will result in a warning citation from the department. Repeated noncompliance could result in the revocation of the farmers' market authorization.

**50.8(8)** A farmstand authorized to participate in the FMNP/SFMNP shall be operated from a permanent building that is primarily used for the sale of eligible foods, is not moveable and remains in the same location year-round. The building shall have at least a roof, sidewalls, and solid floor to protect produce and people. Wood post frame, stud frame, rigid-frame metal, and concrete block construction are suitable farmstand construction. Up to two moveable farmstands that do not meet the requirements of permanent farmstands may be authorized in cities and villages that are not located within ten miles of an authorized farmers' market. If three or more applications for moveable farmstands within the same city or village are received by the department, the applicants shall be required to meet the authorization requirements of a farmers' market. An authorized farmstand must be staffed during all hours of operation. Failure to comply will result in a warning citation from the department. Repeated noncompliance could result in the revocation of the farmstand authorization.

**21—50.9(159) Vendor certification.**

**50.9(1)** Vendor certification shall not be in effect and vouchers shall not be accepted until the applicant receives a certified vendor identification card, a certified vendor identification sign, a certified vendor stamp, a copy of the vendor application form, and the applicant copy of the department-vendor agreement signed by both parties.

**50.9(2)** Vendor certification expires at the end of each year of issuance. Individuals must annually apply for and receive vendor certification in order to participate in FMNP/SFMNP.

**50.9(3)** The department does not limit the number of vendors who may become certified under FMNP/SFMNP. A vendor certified to accept program vouchers may accept vouchers at any authorized market in the state upon approval by the department to participate in that particular market and acceptance by the particular market. A vendor who satisfies all the following criteria shall be certified to accept vouchers.

- a. Indicates an intent to participate in one or more authorized farmers' markets/farmstands for a majority of weeks of the market season. A vendor who does not participate in the FMNP/SFMNP for the majority of weeks of the season may be certified to accept vouchers only at farmers' markets that have been previously authorized. A certified vendor who does not participate in the FMNP/SFMNP for the majority of weeks of the season will not be considered in the standard of three eligible certified vendor applications required for a farmers' market to receive authorization.

- b. Participates in training on FMNP/SFMNP rules and procedures through attendance in an entire session of one of the six scheduled training meetings conducted by department staff.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

c. Meets the eligibility requirements based on the information submitted in a completed application to the department prior to the deadline.

d. Is 18 years of age or older and submits a completed and signed certified vendor agreement to the department.

e. Resides and grows eligible foods within Iowa or in a neighboring state in a county adjacent to Iowa's border.

**21—50.10(159) Certified vendor obligations.** A certified vendor shall be responsible for, but not limited to, all of the following:

1. Beginning each market day with at least 20 percent of all products for sale or display in a certified vendor stall as eligible foods, having personally grown a majority of the eligible foods for sale or display, and with all produce being locally grown. When eligible foods are purchased for resale from another producer or wholesaler, valid receipts must be presented to the department upon request and must contain the following information: the name, address and telephone number of the producer/wholesaler; the date of purchase; location of the growing site; and quantity purchased, itemized by product type.

2. Accepting vouchers only for a transaction that takes place at the location, hours, and days of an authorized farmers' market/farmstand, only in exchange for eligible foods, and signed by the recipient or proxy at the time of purchase.

3. Prominently displaying a certified vendor identification sign that is located on the customer traffic side of the stall. The certified vendor identification sign must be removed or covered when the eligible foods are sold out.

4. Providing eligible foods to recipients upon receipt of a valid and properly completed voucher, which is signed at the time of sale. Vouchers that are properly presented must be accepted by certified vendors participating in the FMNP/SFMNP.

5. Accepting vouchers as payment for eligible foods only if presented on or before the usage expiration date printed on the face of the voucher.

6. Stamping each transacted voucher with the certified vendor number prior to voucher deposit and submitting vouchers for payment on or before 15 days following the expiration date printed on the face of the voucher.

7. Handling transactions with recipients in the same manner as transactions with all other customers, to ensure that FMNP/SFMNP clients are not exposed to discriminatory practices in any form.

8. Not collecting state or local taxes on purchases involving vouchers.

9. Providing eligible foods to recipients at the current price or less than the current price charged to other customers.

10. Not levying a surcharge based on the use of vouchers by recipients.

11. Not returning cash or issuing credit in any form to recipients during sales transactions that involve vouchers only. In the event of a single transaction in which a recipient presents a combination of cash and vouchers for the purchase of locally grown fresh produce, cash or credit up to the value of the cash portion of the payment may be given to the recipient. Credits or refunds may not be issued on returned eligible foods that were purchased with vouchers.

12. Participating in training as the department deems necessary to carry out the intent of FMNP/SFMNP.

13. Cooperating with the department in the evaluation of each season by completely and accurately responding to a survey, with resubmission to the department in a specified and timely manner.

14. Immediately informing the department in the event of loss, destruction, or theft of the certified vendor identification card, certified vendor identification sign, or certified vendor stamp so that a replacement may be issued.

15. Complying with all procedures and rules as herein outlined and as delineated in the department vendor agreement, the certified vendor handbook, and written notices of clarification issued by the department to the vendor.

16. Complying with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, United States Department of Agriculture regulations on nondiscrimination contained in Parts 15, 15a and 15b and FNS instructions as outlined in 248.7 and 249.7 of the Title 7 Code of Federal Regulations as of May 26, 2005.

17. Agreeing to be monitored at farmers' markets/farmstands and growing sites for compliance with FMNP/SFMNP requirements, including both overt and covert monitoring, and providing directions to growing sites upon request of department staff.

18. Not seeking restitution from FMNP/SFMNP recipients for vouchers not paid by the department.

19. Paying the department for any vouchers transacted in violation of the FMNP/SFMNP regulations.

20. Ensuring that all other persons who act on behalf of the certified vendor understand and adhere to the procedures and regulations of the FMNP/SFMNP.

21. Coordinating with other certified vendors to ensure that at least one certified vendor remains on site during the posted hours and days of operation.

**21—50.11(159) Certified vendor noncompliance sanctions.**

**50.11(1)** A voucher shall be returned to the certified vendor unpaid if the certified vendor identification number is not properly stamped on the face of the voucher or if the recipient signature is missing on the face of the voucher. A voucher may be resubmitted for payment in the event that the signature or vendor certification identification error can be properly and legally corrected by the certified vendor.

**50.11(2)** Sanctions for violations of FMNP/SFMNP procedures and rules applicable to a certified vendor are as follows:

a. A warning citation may be the sanction for violation of the requirement to:

(1) Appropriately display the certified vendor identification sign,

(2) Post the current operating sticker to the vendor identification sign or vendor identification card, or

(3) Coordinate with other certified vendors to ensure that at least one certified vendor remains on site during the posted hours and days of operation.

If a pattern of disregard is evident, the vendor may be suspended for the remainder of the current year and the following year.

b. A warning citation after the first violation and suspension from the FMNP/SFMNP for the remainder of the current year and the following year after the second violation (regardless of when the first violation occurred) may be the sanctions for violation of the requirement to:

(1) Begin each market day with at least 20 percent of all products for sale or on display in a certified vendor stall as eligible foods, having personally grown a majority of the eligible foods for sale or display, and with all produce being locally grown.

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(2) Accept vouchers only at locations, hours, or days authorized by the department.

(3) Provide eligible foods to recipients upon receipt of a valid and properly completed voucher, which is signed at the time of sale.

(4) Accept vouchers as payment for eligible foods only if presented on or before the usage expiration date printed on the face of the voucher.

(5) Handle transactions with recipients in the same manner as transactions with all other customers to ensure that FMNP/SFMNP clients are not exposed to discriminatory practices in any form.

(6) Not collect state or local taxes on purchases involving vouchers.

(7) Provide eligible foods to recipients at the current price or less than the current price charged to other customers.

(8) Not levy a surcharge based on the use of vouchers by recipients.

(9) Comply with all procedures and rules as herein outlined and as delineated in the department vendor agreement, the certified vendor handbook, and written notices of clarification issued by the department to the vendor.

(10) Agree to be monitored at farmers' markets/farmstands and growing locations for compliance with FMNP/SFMNP requirements, including both overt and covert monitoring; provide proper receipts for produce purchased for resale; or provide directions to growing sites upon request of department staff.

(11) Refrain from abusive or discriminatory treatment of recipients or FMNP/SFMNP staff.

c. Disqualification without reinstatement may be the sanction for violation of the requirement to:

(1) Accept vouchers only in exchange for eligible foods, or

(2) Return no cash or issue no credit in any form to recipients during sales transactions that involve vouchers only.

**50.11(3)** Violations involving the use of multiple vouchers in a single sales transaction shall be considered as a single violation. Violations involving multiple sales transactions, regardless of time elapsed, shall be considered multiple violations at a standard of one violation per sales transaction.

**50.11(4)** Citations. A written citation shall be issued to the certified vendor by the department within five days of receipt of evidence of a violation. A written citation from the department shall be pending for five days following receipt of the citation by the certified vendor. The certified vendor shall be granted the pending period for presenting sufficient evidence to the department to substantiate a reversal. Remedies undertaken in response to receipt of a written notice of a pending citation of noncompliance shall not constitute evidence in defense of such citation. Failure to present any evidence (oral or written) to the department within the specified period shall constitute acceptance of the citation by the certified vendor. Submission of insufficient evidence by the certified vendor for determination of reversal on the pending citation by the department may result in a sanction upon completion of the pending period.

**50.11(5)** Suspension. Suspension of a certified vendor from participation in FMNP/SFMNP shall remain in effect for the balance of the current year and the following year. During the suspension period, the cited vendor shall refrain from participating in FMNP/SFMNP. The department shall have the right to reimbursement from the vendor of an amount equal in value to vouchers deposited after the official date of the suspension notification. The suspended vendor is required to return the certified vendor identification sign(s),

certified vendor identification card, and certified vendor stamp to the department within 15 days of receipt of the suspension notice. At the conclusion of a suspension period, the vendor must reapply for and receive certification in order to resume participation in FMNP/SFMNP.

**50.11(6)** Disqualification. Disqualification shall be without reinstatement. The disqualified vendor is required to return the certified vendor identification sign(s), certified vendor card, and certified vendor stamp to the department within 15 days of receipt of the disqualification notice. In the event of a disqualification, the department shall have the right to reimbursement from the vendor of an amount equal in value to vouchers deposited after the official date of disqualification notification.

**50.11(7)** Probationary status. Any vendor successfully recertified following suspension will be on probationary status for one full FMNP/SFMNP season. Recurrence of a substantiated suspension violation during the probationary period and for which the certified vendor has been cited shall be sufficient grounds for immediate and automatic disqualification.

**21—50.12(159) Appeal.** A certified vendor who wishes to appeal a sanction made by the department which resulted in a suspension or disqualification may make a written request for administrative appeal to the department's FMNP/SFMNP director. This appeal must be made within 15 days of receipt of sanction notification by the certified vendor. The provisions of 21—Chapter 2 shall be applicable to an appeal except as otherwise provided in this chapter. The farmer/farmers' market/CSA program has the right to appeal a denial of an application to participate. Expiration of a contract or agreement shall not be subject to appeal.

**21—50.13(159) Deadlines.**

**50.13(1)** Submission of farmers' market/farmstand/CSA assurances. Assurances, on forms provided by the department, must be submitted no later than May 1 in order for a farmers' market/farmstand/CSA to be published in the Directory of Authorized Locations. Assurances will be accepted no later than June 30.

**50.13(2)** Submission of vendor application. All applications shall be submitted no later than one month preceding the last date on which vouchers may be used by recipients at an authorized farmers' market/farmstand/CSA.

**50.13(3)** Recipient voucher usage expiration. Vouchers shall be valid for recipient use from the season starting date through the ending date as designated by the department. Such date shall be clearly printed on the voucher face. Vouchers shall be null and void after the expiration date.

**50.13(4)** Certified vendor voucher reimbursement. All vouchers accepted by a certified vendor shall be deposited on or before 15 days following the date of expiration for voucher usage by recipients. Such date shall be clearly printed in the endorsement space on the back of the voucher. Any claim to voucher payment beyond the voucher reimbursement expiration date is not valid and shall be denied.

**50.13(5)** Submissions by local agency. Deadlines for submission of records, reports, survey instruments and undistributed vouchers by local agencies shall be established by the department and specified in the agreement entered into with the local agency.

**50.13(6)** Operations plans and reports to USDA-FNS. The department shall develop and submit plans and reports in a manner prescribed by USDA-FNS.

**21—50.14(159) Discrimination complaints.** FMNP/SFMNP is open to all eligible persons. Persons seeking to file

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

discrimination complaints based on race, national origin, age, sex, or disability may write to USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue SW, Washington, DC 20250-9410.

These rules are intended to implement Iowa Code chapter 159.

[Filed Emergency 6/10/05, effective 6/10/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4323B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44, the Department of Human Services amends Chapter 7, "Appeals and Hearings," and Chapter 130, "General Provisions," Iowa Administrative Code.

These amendments clarify the grounds for terminating social services and specify that clients will not be granted a hearing on an appeal of service termination when the reason for the action is that the Department no longer offers the service. Existing rules around this issue reference the Social Services Block Grant Preexpenditure Report (formerly the Title XX Plan), which at one time addressed all social services offered by the Department. Changes in service funding have reduced the applicability of this report to only a few services, so the report is no longer an effective vehicle for addressing service availability.

The impetus for this rule making comes from the mandated redesign of child welfare services, "Better Results for Kids," which has resulted in the Department's refocusing eligibility criteria and available services toward children at risk of repeated maltreatment. The Department has adopted a series of emergency rules limiting eligibility and services as part of the redesign: **ARC 4019B**, published in the Iowa Administrative Bulletin on March 2, 2005, **ARC 4138B**, published on May 11, 2005, and **ARC 4223B**, published June 8, 2005. Existing rules on service termination do not make clear that failure to meet eligibility criteria is grounds for terminating service, and that services can be eliminated other than through the Social Services Block Grant Preexpenditure Report.

These amendments do not provide for waivers in specified situations because a waiver of grounds for termination and hearing policy would not be appropriate. If a service is no longer available through the Department, there is no remedy that a hearing can apply.

The Council on Human Services adopted these amendments June 15, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2003 Iowa Acts, chapter 178, section 44, which authorizes the Department to adopt rules without notice and public participation. It is impracticable to allow for public comment before the effective date for service terminations under previously adopted rules, July 1, 2005.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2003 Iowa Acts, chapter 178, section 44.

These amendments are also published herein under Notice of Intended Action as **ARC 4336B** to allow for public comment.

These amendments are intended to implement Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule **7.5(2)**, paragraph "a," as follows:

Amend subparagraph (1) as follows:

(1) ~~Services are changed from one plan year to the next in the social service block grant preexpenditure report and as a result the~~ *The service is no longer available through the department.*

Rescind and reserve subparagraph (2).

ITEM 2. Amend subrule **130.5(2)**, paragraphs "d" and "e," as follows:

d. ~~The client's income or resources exceed the financial guidelines, or the client no longer meets other eligibility criteria established by the department for the service, or~~

e. ~~The service is no longer offered or available in the Social Services Block Grant Pre-Expenditure Report from the department, or~~

[Filed Emergency 6/17/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4322B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services amends Chapter 36, "Facility Assessments," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments reflect Iowa's settlement with the federal Centers for Medicare and Medicaid Services (CMS) over the use of intergovernmental transfers in Medicaid. The amendments eliminate:

- Supplemental payments to physicians employed at publicly owned acute-care teaching hospitals, which was adopted in **ARC 2566B**, published in the Iowa Administrative Bulletin on July 9, 2003, but has not been implemented, pending CMS approval. The Department plans to implement these payments for state fiscal years 2004 and 2005 only.
- The nursing facility quality assurance assessment, which was adopted in **ARC 3021B**, published in the Iowa

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Administrative Bulletin on December 10, 2003, but has not been implemented, pending CMS approval. The Department has no plans to implement this assessment.

- The high-cost adjustment for Iowa state-owned hospitals with more than 500 beds, which was adopted in **ARC 3461B**, published in the Iowa Administrative Bulletin on July 7, 2004, but has not been implemented, pending CMS approval. The Department plans to implement this adjustment for state fiscal year 2005 only.

These amendments implement a limit on payments to public hospitals and public nursing facilities to the facility's actual medical assistance program costs.

Existing mechanisms for hospitals to receive supplemental disproportionate-share and graduate medical education payments are replaced by new methodology.

These amendments do not provide for waivers in specified situations because all providers should be subject to the same payment methodologies.

The Council on Human Services adopted these amendments June 15, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2005 Iowa Acts, House File 841, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2005 Iowa Acts, House File 841, section 66.

These amendments are also published herein under Notice of Intended Action as **ARC 4335B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, sections 22, 35, 36, and 38.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 36** by rescinding and reserving **Division II**.

ITEM 2. Amend paragraph **79.1(5)"a"** as follows:

Amend the definitions of "blended base amount" and "final payment rate" as follows:

"Blended base amount" shall mean the case-mix-adjusted, hospital-specific operating cost per discharge associated with treating Medicaid patients, plus the statewide average case-mix-adjusted operating cost per Medicaid discharge, divided by two. This base amount is the value to which payments for inflation, and capital costs, and the high-cost adjustment are added to form a final payment rate. The costs of hospitals receiving reimbursement as critical access hospitals during any of the period of time included in the base-year cost report shall not be used in determining the statewide average case-mix-adjusted operating cost per Medicaid discharge.

For purposes of calculating the disproportionate share rate only, a separate blended base amount shall be determined for any hospital that qualifies for a disproportionate share payment only as a children's hospital based on a distinct area or areas serving children. *This separate amount shall be determined* using only the case-mix-adjusted operating cost per

discharge associated with treating Medicaid patients in the distinct area or areas of the hospital where services are provided predominantly to children under 18 years of age.

"Final payment rate" shall mean the aggregate sum of the ~~three two~~ components (the blended base amount, and capital costs, and the high-cost adjustment) that, when added together, form the final dollar value used to calculate each provider's reimbursement amount when multiplied by the DRG weight. These dollar values are displayed on the rate table listing.

Rescind the definition of "high-cost adjustment."

ITEM 3. Amend paragraph **79.1(5)"b,"** introductory paragraph, as follows:

b. Determination of final payment rate amount. The hospital DRG final payment amount reflects the sum of inflation adjustments to the blended base amount plus ~~add-ons an~~ *add-on* for capital costs and ~~high-cost adjustments~~. This blended base amount plus the ~~add-ons~~ *add-on* is multiplied by the set of Iowa-specific DRG weights to establish a rate schedule for each hospital. Federal DRG definitions are adopted except as provided below:

ITEM 4. Amend paragraph **79.1(5)"d"** as follows:

Amend subparagraph **(1)** as follows:

(1) Calculation of statewide average case-mix-adjusted cost per discharge. The statewide average cost per discharge is calculated by subtracting from the statewide total Iowa Medicaid inpatient expenditures the total calculated dollar expenditures based on hospitals' base-year cost reports for capital costs, medical education costs, and calculation of actual payments that will be made for additional transfers, outliers, physical rehabilitation services, and indirect medical education. ~~For purposes of this subparagraph, the calculation of payments that will be made for additional transfers and outliers shall exclude that portion of the payment that represents high-cost adjustments.~~ Cost report data for hospitals receiving reimbursement as critical access hospitals during any of the period of time included in the base-year cost report is not used in calculating the statewide average cost per discharge. The remaining amount (which has been case-mix adjusted and adjusted to reflect inflation if applicable) is divided by the statewide total number of Iowa Medicaid discharges reported in the Medicaid management information system (MMIS) less an actual number of nonfull DRG transfers and short stay outliers.

Amend subparagraph **(2)**, introductory paragraph, as follows:

(2) Calculation of hospital-specific case-mix-adjusted average cost per discharge. The hospital-specific case-mix-adjusted average cost per discharge is calculated by subtracting from the lesser of total Iowa Medicaid costs, or covered reasonable charges as determined by the hospital's base-year cost report or MMIS claims system, the actual dollar expenditures for capital costs, direct medical education costs, the payments that will be made for nonfull DRG transfers, outliers, and physical rehabilitation services if included. ~~For purposes of this subparagraph, the calculation of payments that will be made for nonfull DRG transfers and outliers shall exclude that portion of the payment that represents high-cost adjustments.~~ The remaining amount is case-mix adjusted, multiplied by inflation factors, and divided by the total number of Iowa Medicaid discharges from the MMIS claims system for that hospital during the applicable base year, less the nonfull DRG transfers and short stay outliers.

ITEM 5. Rescind and reserve subparagraph **79.1(5)"e"(2)**.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend subparagraph **79.1(5)“f”(3)**, introductory paragraph, as follows:

(3) Cost outliers. Cases qualify as cost outliers when costs of service in a given case, not including any add-on amounts for ~~high-cost adjustments~~, direct or indirect medical education or disproportionate share costs, exceed the cost threshold. This cost threshold is determined to be the greater of two times the statewide average DRG payment for that case or the hospital's individual DRG payment, ~~reduced by the high-cost adjustment~~, for that case plus \$16,000. Costs are calculated using hospital-specific cost-to-charge ratios determined in the base-year cost reports. Additional payment for cost outliers is 80 percent of the excess between the hospital's cost for the discharge and the cost threshold established to define cost outliers. Payment of cost outlier amounts shall be paid at 100 percent of the calculated amount and made at the time the claim is paid.

ITEM 7. Amend paragraph **79.1(5)“t,”** subparagraphs (1) and (2), as follows.

(1) ~~Except as provided in subparagraph (2) below, the~~ The department may not pay a provider more for inpatient hospital services under Medicaid than the provider's customary charges to the general public for the services.

(2) ~~The department may pay a public provider that provides services free or at a nominal charge at the same rate that would be used if the provider's charges were equal to or greater than its costs. Payments to a hospital that is owned or operated by state or non-state government shall not exceed the hospital's actual medical assistance program costs. The department shall perform a cost settlement annually after the desk review or audit of the hospital's cost report. The department shall determine the aggregate payments made to the hospital under the diagnosis-related group methodology and compare this amount to the hospital's actual medical assistance program costs as determined from the audit or desk review of the hospital's cost report. For purposes of this determination, payments shall include amounts received from the Medicaid program, including graduate medical education payments and outlier payments, as well as patient and third-party payments up to the Medicaid-allowed amount. If the payments exceed the hospital's actual medical assistance program costs, the amount by which payments exceed actual costs shall be requested and collected from the hospital.~~

ITEM 8. Rescind paragraph **79.1(5)“ab”** and adopt the following **new** paragraphs **“ab”** and **“ac”** in lieu thereof:

ab. Enhanced disproportionate-share payments. In addition to payments from the graduate medical education and disproportionate share fund pursuant to paragraph 79.1(5)“y,” payment shall be made to all Iowa hospitals qualifying for enhanced disproportionate-share payments. Interim payments based on estimated allowable costs will be paid to qualifying hospitals under this paragraph. Final payments under this paragraph will be determined as follows:

(1) Qualifying criteria for enhanced disproportionate-share payments. A hospital qualifies for enhanced disproportionate-share payments if it qualifies for payments for disproportionate share from the graduate medical education and disproportionate-share fund pursuant to paragraph 79.1(5)“y” and meets one of the following conditions:

1. Is an Iowa state-owned hospital with more than 500 beds and eight or more distinct residency specialty or subspecialty programs recognized by the American College of Graduate Medical Education.

2. Is a non-state government-owned acute-care teaching hospital located in a county with a population over 350,000.

3. Is an Iowa state-owned hospital for persons with mental illness.

(2) Amount of payment. The total amount of disproportionate-share payments from the graduate medical education and disproportionate share fund and enhanced disproportionate share shall not exceed the amount of the state's allotment under Public Law 102-234. In addition, the total amount of disproportionate-share payments from the graduate medical education and disproportionate share fund and enhanced disproportionate-share payments shall not exceed the hospital-specific disproportionate-share caps under Public Law 103-666.

The amount available for enhanced disproportionate-share payments shall be the federal allotment less disproportionate-share payments from the graduate medical education and disproportionate share fund. In the event that the disproportionate-share allotment for enhanced payments is insufficient to pay 100 percent of the cost that is eligible for disproportionate-share payments, the allotment shall be allocated among qualifying hospitals using their eligible cost as an allocation basis.

(3) Final disproportionate-share adjustment. The department's total year-end disproportionate-share obligation to a qualifying hospital shall be calculated following completion of the desk review or audit of the hospital's Form CMS 2552, Hospital and Hospital Health Care Complex Cost Report.

ac. Enhanced graduate medical education payments. In addition to payments from the graduate medical education and disproportionate share fund pursuant to paragraph 79.1(5)“y,” payment shall be made to all Iowa hospitals qualifying for enhanced graduate medical education payments. Interim payments based on estimated allowable costs will be paid to qualifying hospitals under this paragraph. Final payments under this paragraph will be determined as follows:

(1) Qualifying for enhanced graduate medical education payments. A hospital shall qualify for enhanced graduate medical education payments if it qualifies to receive both direct and indirect medical education payments from the graduate medical education and disproportionate share fund pursuant to paragraph 79.1(5)“y” and meets one of the following conditions:

1. Is an Iowa state-owned hospital with more than 500 beds and eight or more distinct residency specialty or subspecialty programs recognized by the American College of Graduate Medical Education; or

2. Is a non-state government-owned acute-care teaching hospital located in a county with a population over 350,000.

(2) Amount of payment. The total amount of graduate medical education payments from the graduate medical education and disproportionate share fund and enhanced graduate medical education shall not exceed each hospital's actual medical assistance program graduate medical education costs. The amount paid to each qualifying hospital for enhanced graduate medical education payments shall be the hospital's actual medical assistance program graduate medical education costs less the graduate medical education payments from the graduate medical education and disproportionate share fund.

(3) Final graduate medical education adjustment. The department's total year-end graduate medical education obligation to a qualifying hospital shall be calculated following completion of the desk review or audit of the hospital's Form CMS 2552, Hospital and Hospital Health Care Complex Cost Report.

ITEM 9. Rescind and reserve paragraph **79.1(7)“b.”**

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 10. Amend paragraph **79.1(16)“t”** as follows:

t. Limitations on payments.

(1) Ambulatory patient groups, as well as other outpatient services, are subject to upper limits rules set forth in Sections 42 CFR 447.321, as amended to September 5, 2001, and 447.325, as amended to January 26, 1993. Requirements under these sections state that, in general, Medicaid may not make payments to providers that would exceed the amount that would be payable to providers under comparable circumstances under Medicare. In aggregate, the total Medicaid payments may not exceed the total payments received by all providers from recipients, carriers or intermediaries for providing comparable services under comparable circumstances under Medicare.

(2) *Payments to a hospital that is owned or operated by state or non-state government shall not exceed the hospital's actual medical assistance program costs. The department shall perform a cost settlement annually after the desk review or audit of the hospital's cost report. The department shall determine the aggregate payments made to the hospital under the ambulatory patient group methodology and shall compare this amount to the hospital's actual medical assistance program costs as determined from the audit or desk review of the hospital's cost report. For purposes of this determination, aggregate payments shall include amounts received from the Medicaid program, including graduate medical education payments and outlier payments, as well as patient and third-party payments up to the Medicaid-allowed amount. If the aggregate payments exceed the hospital's actual medical assistance program costs, the amount by which payments exceed actual costs shall be requested and collected from the hospital.*

ITEM 11. Amend rule 441—81.6(249A) as follows:

Amend subrule **81.6(4)**, paragraph **“a,”** by adopting **new** subparagraph **(4)** as follows:

(4) Aggregate payments to a nursing facility that is owned or operated by state or non-state government shall not exceed the facility's actual medical assistance program costs. Aggregate payments shall include amounts received from the Medicaid program, as well as receipts from patient and other third-party payments up to the Medicaid-allowed amount.

Rescind and reserve subrule **81.6(21)**.

[Filed Emergency 6/17/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4321B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 51, “Eligibility,” Iowa Administrative Code.

In compliance with 2005 Iowa Acts, House File 825, section 108, these amendments change eligibility standards for the State Supplementary Assistance category of Medicare and Medicaid eligibles as follows:

- The minimum income limit is lowered from 135 percent of the federal poverty level to 120 percent of the federal

poverty level. This change will allow the Department to collect federal financial participation on the Medicare premiums it pays for additional Medicaid recipients.

- The Medicaid eligibility requirement is clarified to refer to full medical assistance benefits (as opposed to limited benefits, such as are available under IowaCare, the family planning waiver, or the Medicare savings programs).

These amendments do not provide for waivers in specified situations because the changes are based on statutory language that the Department has no authority to waive.

The Council on Human Services adopted these amendments June 15, 2005.

The Department finds that notice and public participation are unnecessary, in that the Department has no discretion to change the rule. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public by making Department rules congruent with statute. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments should be waived.

These amendments are also published herein under Notice of Intended Action as **ARC 4334B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249.3 as amended by 2005 Iowa Acts, House File 825, section 108.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule 51.6(1) as follows:

**51.6(1)** Medicaid eligibility. The recipient must be eligible for and receiving *full* medical assistance benefits under Iowa Code chapter 249A without regard to eligibility based on receipt of state supplementary assistance under this rule, and without being required to meet a spenddown or pay a premium to be eligible for medical assistance benefits.

ITEM 2. Amend subrule 51.6(6) as follows:

**51.6(6)** Income. Income of a recipient shall be within the income limit for the person's Medicaid eligibility group, but must exceed ~~135~~ 120 percent of the federal poverty level.

ITEM 3. Amend rule **441—51.6(249)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249.3 as amended by ~~2004~~ 2005 Iowa Acts, House File ~~2134~~ 825, section ~~4-108~~.

[Filed Emergency 6/17/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4320B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," and Chapter 76, "Application and Investigation," Iowa Administrative Code.

These amendments establish a new Medicaid coverage group limited to the provision of family planning services. The Department has applied to the federal Centers for Medicare and Medicaid Services for a demonstration waiver under Section 1115(a) of the Social Security Act. The Secretary of the Department of Health and Human Services has the authority to grant a waiver of Medicaid eligibility requirements in a demonstration project to test new policies that are likely to assist in promoting the objectives of the Medicaid program.

The waiver requested by the Department would extend eligibility for Medicaid-funded family planning services to women who would otherwise not be Medicaid-eligible. The goal of the project is to reduce the number of unintended pregnancies in Iowa and the number of births paid for by the Iowa Medicaid program.

Under current policy, a pregnant woman with income at or below 200 percent of the federal poverty level is eligible for Medicaid during the pregnancy and for 60 days after the pregnancy ends. After the 60 days, women who do not qualify under the more restrictive guidelines of the Family Medical Assistance Program are no longer eligible for Medicaid.

Under the waiver, eligibility for a woman who was a Medicaid recipient when her pregnancy ended would be extended for 12 months beyond the 60-day postpartum period for family planning services only. Any woman of childbearing age whose countable income is at or below 200 percent of the federal poverty level would also be able to apply for Medicaid family planning coverage.

Women eligible in this coverage group may receive all family planning services covered by the Iowa Medicaid program, but no other Medicaid-funded services. Family planning includes medically necessary services and supplies related to birth control and pregnancy prevention. Services include contraceptive management with a variety of methods, patient education, counseling, and referral as needed to other social services and health care providers. Reimbursement for medical transportation will be available if a woman must pay to travel outside her community to obtain services.

These amendments do not provide for waivers in specified situations because they provide a benefit to women who will be served.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3580B**. An Amended Notice of Intended Action to schedule a public hearing was published January 5, 2005, as **ARC 3925B**. The Department held a public hearing on these amendments on January 26, 2005. No comments were received on the Notice of Intended Action.

The Department has made one change to the amendments in the Notice of Intended Action. Paragraph 76.1(1)"d" in Item 2 of the Notice of Intended Action limited agencies that may accept applications for this coverage to agencies that provided planning services as of July 1, 2004. The Department has changed this to "provided family planning services

as of July 1, 2004, or later." Paragraph "d" now reads as follows:

"d. Women applying for medical assistance for family planning services under 441—subrule 75.1(41) may also apply at any Iowa Title X family planning clinic or any delegate agency as defined in rule 441—173.1(234) that provided family planning services as of July 1, 2004, or later."

The Council on Human Services adopted these amendments on June 15, 2005.

The Department finds that these amendments confer a benefit on the public by expanding eligibility for Medicaid benefits. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments shall be waived.

These amendments became effective on July 1, 2005.

These amendments are intended to implement Iowa Code section 249A.4; 2004 Iowa Acts, chapter 1175, section 116, subsection 8; and 2005 Iowa Acts, House File 825, section 9, subsection 4.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [75.1(41), 76.1, 76.7] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3580B**, IAB 8/4/04.

[Filed Emergency After Notice 6/17/05, effective 7/1/05]  
[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

**ARC 4319B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments publish the Department's annual updates of:

- The statewide average cost of nursing facility services to a private-pay resident. This figure is determined by a survey of facilities and is used to determine the period of ineligibility when a person transfers assets for less than market value. The monthly average cost has increased from \$3,597.84 to \$3,697.55. Since the amount transferred is divided by this cost to determine the number of months of ineligibility for nursing facility care and other long-term care services, the resulting periods of ineligibility will be slightly shorter.

- The statewide average charges or maximum Medicaid rate for various levels of institutional care. Iowa Code section 633.707 requires the Department to calculate and publish these figures, which are used to determine the disposition of the income of a medical assistance income (Miller-type) trust. Miller-type trusts allow people whose income is above Medicaid limits but is less than the cost of care in a medical institution to attain eligibility by depositing their income in a trust. When the person's total income is less than the statewide average charge for the person's level of care, the trust releases income to the beneficiary only up to the limit for

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Medicaid eligibility (300 percent of the monthly SSI benefit, or \$1,737). An increase in the average charge allows more people to qualify for Medicaid.

Changes in the average charge figures for state fiscal year 2005 are as follows:

- Nursing facility care: an increase to \$3,391 per month (previously \$3,246).
- ICF/MR care: an increase to \$11,138 per month (previously \$10,752).
- Mental health institute care: an increase to \$13,992 per month (previously \$13,299).

The figure for psychiatric medical institutions for children remains unchanged at \$4,477 per month.

These amendments do not provide for waivers in specified situations because everyone should be subject to the same conditions in determining Medicaid eligibility as a matter of fairness, and these changes provide a benefit to applicants and recipients.

The Council on Human Services adopted these amendments June 15, 2005.

The Department finds that notice and public participation are unnecessary because the amendments simply update existing rules pursuant to established policy based on mathematical calculations and implement changes made by legislation. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit by raising eligibility thresholds and limiting periods of ineligibility. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code sections 249A.4, 633.707, and 633.709.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

**75.23(3)** Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2004~~ 2005, through June 30, ~~2005~~ 2006, this average statewide cost shall be ~~\$3,597.84~~ \$3,797.55 per month or ~~\$118.35~~ \$121.63 per day.

ITEM 2. Amend paragraph **75.24(3)“b,”** first unnumbered paragraph and subparagraphs (1), (4), and (5), as follows:

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from July 1, ~~2004~~ 2005, to June 30, ~~2005~~ 2006, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$3,246~~ \$3,391 per month.

(4) The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is ~~\$10,752~~ \$11,138 per month.

(5) The average statewide charge to a resident of a mental health institute is ~~\$13,299~~ \$13,992 per month.

[Filed Emergency 6/17/05, effective 7/1/05]

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**ARC 4318B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 825, section 29, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments:

- Implement the 3 percent increase in reimbursement rates for medical providers authorized by 2005 Iowa Acts, House File 825, section 29. This increase affects advanced registered nurse practitioners, ambulances, ambulatory surgical centers, audiologists, birth centers, chiropractors, clinics, community mental health centers, dental services, durable medical equipment and supply dealers, family planning clinics, hearing aid dispensers, home health agencies, inpatient and outpatient hospital services, payments to qualifying hospitals from the Graduate Medical Education and Disproportionate Share Fund, lead inspection agencies, maternal health centers, opticians, optometrists, orthopedic shoe dealers, physical therapists, physicians, podiatrists, the pharmacy dispensing fee, the maximum reimbursement rate for psychiatric medical institutions for children, psychologists, rehabilitation agencies, rehabilitative treatment, screening centers, and the following home- and community-based waiver services: adult day care, personal emergency response systems, home health aides, homemakers, nursing care, respite, chore, home-delivered meals, transportation, nutritional counseling, assistive devices, senior companion, consumer-directed attendant care, counseling, case management, supported community living, supports to maintain employment, behavioral programming, family counseling and training, prevocational services, interim medical monitoring and treatment, and day habilitation.

- Provide that the percentage difference used to calculate the excess payment allowance for direct and indirect care in nursing facilities is set at 0%, effectively eliminating excess payment allowances, as required by 2005 Iowa Acts, House File 825, section 31.

- Update language on the basis of reimbursement for rehabilitative treatment services to reflect current practice.

To eliminate the high degree of repetition resulting from past efforts to standardize payment methodology for services offered under the six home- and community-based services waivers, these amendments collapse the separate lists of services for each waiver into a single combined list. Five lists are eliminated, and services from all waivers are added to the remaining list. The “new” language added for several types of facility respite providers and 11 other services does not represent a change in policy, except for the 3 percent rate increase as noted above.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations because they either benefit the affected providers or are based on statutory language that the Department does not have authority to waive.

The Council on Human Services adopted these amendments June 15, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable, in that the legislative changes being implemented take effect on July 1, 2005. 2005 Iowa Acts, House File 825, section 29, authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these

amendments should be waived, as authorized by 2005 Iowa Acts, House File 825, section 29.

These amendments are also published herein under Notice of Intended Action as **ARC 4333B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, House File 825, sections 29 and 31.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)** as follows:

Rescind provider categories "HCBS AIDS/HIV waiver," "HCBS brain injury waiver," "HCBS ill and handicapped waiver," "HCBS MR waiver," and "HCBS physical disability waiver."

Amend the remaining provider categories as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Advanced registered nurse practitioners	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Ambulance	Fee schedule	Ground ambulance: Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%. Air ambulance: A base rate of <del>\$203.25</del> \$209.54 plus <del>\$7.61</del> \$7.85 per mile for each mile the patient is carried.
Ambulatory surgical centers	Base rate fee schedule as determined by Medicare. See 79.1(3)	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Area education agencies	No change.	No change.
Audiologists	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Birth centers	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Chiropractors	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Clinics	No change.	No change.
Community mental health centers	Fee schedule	<del>Reimbursement rate for center</del> Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Dentists	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Durable medical equipment, prosthetic devices and medical supply dealers	Fee schedule. See 79.1(4)	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Family planning clinics	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Federally qualified health centers (FQHC)	No change.	No change.
HCBS <del>elderly</del> waiver service providers, including:		<i>Except as noted, limits apply to all waivers that cover the named provider.</i>
1. Adult day care	Fee schedule	<i>For AIDS/HIV, brain injury, elderly, and ill and handicapped waivers:</i> Veterans Administration contract rate or <del>\$20.54</del> \$21.26 per half day, <del>\$41.09</del> \$42.32 per full day, or <del>\$61.63</del> \$63.48 per extended day if no Veterans Administration contract. <i>For mental retardation waiver:</i> County contract rate plus 3% or, in the absence of a contract rate, the state per mile rate (for individual providers), or rate set by area agency on aging.
2. Emergency response system	Fee schedule	Initial one-time fee <del>\$46.22</del> \$47.61. Ongoing monthly fee <del>\$35.95</del> \$37.03.
3. Home health aides	Retrospective cost-related	<i>For AIDS/HIV, elderly, and ill and handicapped waivers:</i> Maximum Medicare rate in effect <del>6/30/05</del> plus 3%.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
		<i>For mental retardation waiver: Maximum Medicare rate in effect 6/30/05 plus 3% converted to an hourly rate.</i>
4. Homemakers	Fee schedule	Maximum of \$18.49 \$19.04 per hour
5. Nursing care	<i>For elderly and mental retardation waivers: Fee schedule as determined by Medicare.</i>	<i>For elderly waiver: \$74.77 \$79.71 per visit.</i>
	<i>For AIDS/HIV and ill and handicapped waivers: Agency's financial and statistical cost report and Medicare percentage rate per visit.</i>	<i>For mental retardation waiver: Maximum Medicare rate in effect 6/30/05 plus 3% converted to an hourly rate.</i>
		<i>For AIDS/HIV and ill and handicapped waivers: Cannot exceed \$79.71 per visit.</i>
6. Respite care providers, including when provided by:		
Home health agency:		
Specialized respite	Rate for nursing services provided by a home health agency (encounter services-intermittent services)	Maximum Medicare rate in effect 6/30/05 plus 3% converted to an hourly rate not to exceed \$294 per day
Basic individual respite	Rate for home health aide services provided by a home health agency (encounter services-intermittent services)	Maximum Medicare rate in effect 6/30/05 plus 3% converted to an hourly rate not to exceed \$294 per day
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$12.24 \$12.61 per hour not to exceed \$294 per day
Home care agency:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	\$31.50 \$32.45 per hour not to exceed \$294 per day
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	\$16.80 \$17.31 per hour not to exceed \$294 per day
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$12.24 \$12.61 per hour not to exceed \$294 per day
Nonfacility care:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	\$31.50 \$32.45 per hour not to exceed \$294 per day
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	\$16.80 \$17.31 per hour not to exceed \$294 per day
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$12.24 \$12.61 per hour not to exceed \$294 per day
Facility care:		
Hospital or nursing facility providing skilled care	\$12.24 \$12.61 per hour	\$12.24 \$12.61 per hour not to exceed daily per diem for skilled nursing facility level of care
Nursing facility	\$12.24 \$12.61 per hour	\$12.24 \$12.61 per hour not to exceed daily per diem for nursing facility level of care
Camps	Retrospectively limited prospective rates. See 79.1(15)	\$12.24 \$12.61 per hour not to exceed \$294 per day
Adult day care	\$12.24 \$12.61 per hour	\$12.24 \$12.61 per hour not to exceed rate for regular adult day care services
<i>Intermediate care facility for the mentally retarded</i>	<i>\$12.61 per hour</i>	<i>\$12.61 per hour not to exceed daily per diem for ICF/MR level of care</i>
<i>Residential care facilities for persons with mental retardation</i>	<i>\$12.61 per hour</i>	<i>\$12.61 per hour not to exceed contractual daily per diem</i>
<i>Foster group care</i>	<i>\$12.61 per hour</i>	<i>\$12.61 per hour not to exceed daily per diem rate for rehabilitative treatment and supportive services</i>
<i>Child care facilities</i>	<i>\$12.61 per hour</i>	<i>\$12.61 per hour not to exceed contractual daily per diem</i>
7. Chore providers service	Fee schedule	\$7.19 \$7.41 per half hour

## HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
8. Home-delivered meal providers meals	Fee schedule	<del>\$7.19</del> \$7.41 per meal. Maximum of 14 meals per week.
9. Home and vehicle modification	No change.	No change.
10. Mental health outreach providers	No change.	No change.
11. Transportation	Fee schedule	<del>State per mile</del> County contract rate plus 3% or, in the absence of a contract rate, the state per mile rate (for individual providers;) or rate set by area agency on aging for all others.
12. Nutritional counseling	Fee schedule	<del>\$7.70</del> \$7.93 per quarter hour unit
13. Assistive devices	Fee schedule	<del>\$102.71</del> \$105.79 per unit
14. Senior companion	Fee schedule	<del>\$6.16</del> \$6.34 per hour
15. Consumer-directed attendant care provided by:		
Agency provider (For elderly waiver: other than an assisted living program)	Fee agreed upon by consumer and provider	<del>\$18.49</del> \$19.04 per hour not to exceed the daily rate of <del>\$106.82</del> \$110.02 per day
For elderly waiver only: Assisted living provider program	Fee agreed upon by consumer and provider	For elderly waiver only: \$1,052 per calendar month. Rate must be prorated per day for a partial month, at a rate not to exceed <del>\$34.60</del> \$35.64 per day
Individual provider	Fee agreed upon by consumer and provider	<del>\$12.33</del> \$12.70 per hour not to exceed the daily rate of <del>\$71.90</del> \$74.06 per day
16. Counseling		
Individual:	Fee schedule	\$10.37 per unit
Group:	Fee schedule	\$41.47 per hour
17. Case management	Fee schedule	\$592.75 per month
18. Supported community living	Retrospectively limited prospective rates. See 79.1(15)	\$33.62 per hour, \$75.83 per day
19. Supported employment:		
Activities to obtain a job	Fee schedule	\$500 per unit not to exceed \$1,500 per calendar year
Supports to maintain employment	Retrospectively limited prospective rates. See 79.1(15)	Maximum of \$33.62 per hour for all activities other than personal care and services in an enclave setting. Maximum of \$19.04 per hour for personal care. Maximum of \$5.95 per hour for services in an enclave setting. Total not to exceed \$2,855.16 per month. Maximum of 40 units per week.
20. Specialized medical equipment	Fee schedule	\$6,000 per year
21. Behavioral programming	Fee schedule	\$10.37 per 15 minutes
22. Family counseling and training	Fee schedule	\$41.47 per hour
23. Prevocational services	Fee schedule	For the brain injury waiver: \$35.99 per day. For the mental retardation waiver: County contract rate plus 3% or in absence of a contract rate, \$46.35 per day.
24. Interim medical monitoring and treatment:		
Home health agency (provided by home health aide)	Rate for home health aide services provided by a home health agency (encounter services-intermittent services)	Maximum Medicare rate in effect 6/30/05 plus 3% converted to an hourly rate
Home health agency (provided by nurse)	Rate for nursing services provided by a home health agency (encounter services-intermittent services)	Maximum Medicare rate in effect 6/30/05 plus 3% converted to an hourly rate

## HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
<i>Child care home or center</i>	<i>Contractual rate. See 441—subrule 170.4(7)</i>	<i>\$12.61 per hour</i>
25. <i>Residential-based supported community living</i>	<i>Retrospectively limited prospective rates. See 79.1(15)</i>	<i>The maximum daily per diem for ICF/MR</i>
26. <i>Day habilitation</i>	<i>Fee schedule</i>	<i>County contract rate or, in the absence of a contract rate, \$12.70 per hour, \$30.90 per half day, or \$61.80 per day.</i>
Hearing aid dispensers	Fee schedule plus product acquisition cost	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Home health agencies (Encounter services-intermittent services)	Retrospective cost-related	Rate in effect <del>6/30/01</del> less 6/30/05 plus 3%.
(Private duty nursing or personal care and VFC vaccine administration for persons aged 20 and under)	Interim fee schedule with retrospective cost settling based on Medicaid Medicare methodology	Rate in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Hospices	No change.	No change.
Hospitals (Critical access)	No change.	No change.
Hospitals (Inpatient)	Prospective reimbursement. See 79.1(5)	Reimbursement rate in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Hospitals (Outpatient)	Prospective reimbursement for providers listed at 441—paragraphs 78.31(1)“a” to “f.” See 79.1(16) Fee schedule for providers listed at 441—paragraphs 78.31(1)“g” to “n.” See 79.1(16)	Ambulatory patient group rate (plus an evaluation rate) and assessment payment rate in effect on <del>6/30/01</del> less 6/30/05 plus 3%. Rates in effect on <del>6/30/01</del> less 6/30/05 plus 3%.
Independent laboratories	No change.	No change.
Indian health service 638 facilities	No change.	No change.
Infant and toddler program providers	No change.	No change.
Intermediate care facilities for the mentally retarded	Prospective reimbursement. See 441—82.5(249A)	Eightieth percentile of facility costs as calculated from <del>12/31/00</del> annual cost reports
Lead inspection agency	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Local education agency services providers	No change.	No change.
Maternal health centers	Reasonable cost per procedure on a prospective basis as determined by the department based on financial and statistical data submitted annually by the provider group	Fee schedule in effect 6/30/05 plus 3%.
MR/CMI/DD case management providers	No change.	No change.
Nursing facilities: 1. Nursing facility care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6(16)“d”(1)“1” and (2)“1” is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is <del>50%</del> 0%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median.	See 441—subrules 81.6(4) and 81.6(14) and paragraph 81.6(16)“f.” The direct care rate component limit under 441—81.6(16)“F”(1) and (2) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16)“F”(1) and (2) is 110% of the patient-day-weighted median.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
1. Nursing facility care ( <i>cont'd</i> )	The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16)“d”(1)“2” and (2)“2” is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the non-direct care excess payment allowance limit is <del>32.5%</del> 0%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median.	
2. Hospital-based, Medicare-certified skilled nursing care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6(16)“d”(3)“1” is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is <del>50%</del> 0%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median. The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16)“d”(3)“2” is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the non-direct care excess payment allowance limit is <del>32.5%</del> 0%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median.	See 441—subrules 81.6(4) and 81.6(14) and paragraph 81.6(16)“f.” The direct care rate component limit under 441—81.6(16)“f”(3) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16)“f”(3) is 110% of the patient-day-weighted median.
Opticians	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Fee schedule in effect <del>6/30/01</del> less <del>6/30/05</del> plus 3%.
Optometrists	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Fee schedule in effect <del>6/30/01</del> less <del>6/30/05</del> plus 3%.
Orthopedic shoe dealers	Fee schedule	Fee schedule in effect <del>6/30/01</del> less <del>6/30/05</del> plus 3%.
Pharmaceutical case management	No change.	No change.
Physical therapists	Fee schedule	Fee schedule in effect <del>6/30/01</del> less <del>6/30/05</del> plus 3%.
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)“a.” Supplemental payments for services at qualifying hospitals.—See 79.1(7)“b.”	Fee schedule in effect <del>6/30/01</del> less <del>6/30/05</del> plus 3%. Supplemental payments as provided in 79.1(7)“b.”
Podiatrists	Fee schedule	Fee schedule in effect <del>6/30/01</del> less <del>6/30/05</del> plus 3%.
Prescribed drugs	See 79.1(8)	<del>\$4.26</del> \$4.39 dispensing fee. (See 79.1(8)“a” and “e”)

## HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Psychiatric medical institutions for children (Inpatient)	Prospective reimbursement	Reimbursement rate for provider based on per diem rates for actual costs on <del>6/30/00</del> 6/30/05, not to exceed a maximum of \$ <del>147.20</del> \$156.03 per day
(Outpatient day treatment)	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Psychologists	Fee schedule	Fee schedule in effect <del>6/30/01</del> less 6/30/05 plus 3%.
Rehabilitation agencies	Fee schedule	Medicare fee schedule <i>in effect</i> 6/30/05 plus 3%; refer to 79.1(21).
Rehabilitation services for adults with a chronic mental illness	No change.	No change.
Rehabilitative treatment services	<del>Reasonable and necessary costs per unit of service based on data included on the Rehabilitative Treatment and Supportive Services Financial and Statistical Report, Form 470-3049. See 441—185.101(234) to 441—185.112(234). A provider who is an individual may choose between the fee schedule in effect November 1, 1993 (See 441—subrule 185.103(7)) and reasonable and necessary costs. Negotiated rates based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors, and availability of funding as established in accordance with 441—subrule 185.112(1).</del>	Rate in effect on <del>6/30/01</del> 6/30/05 plus 3%.
Rural health clinics (RHC)	No change.	No change.
Screening centers	Fee schedule	Reimbursement rate for center in effect <del>6/30/01</del> less 6/30/05 plus 3%.
State-operated institutions	No change.	No change.

ITEM 2. Amend subrule **79.1(5)**, paragraph “y,” subparagraphs (2), (5), and (8), as follows:

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(5)“y”(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to inpatient services for July 1, 2004 2005, through June 30, ~~2005~~ 2006, is \$~~8,065,366~~ \$8,307,327.

(5) Allocation to fund for indirect medical education. Except as reduced pursuant to subparagraph 79.1(5)“y”(6), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for indirect medical education for July 1, 2004 2005, through June 30, 2005 2006, is \$~~14,161,431~~ \$14,586,274.

(8) Allocation to fund for disproportionate share. The total amount of funding that is allocated to the graduate medical education and disproportionate share fund for disproportionate share payments for July 1, 2004 2005, through June 30, 2005 2006, is \$~~6,769,557~~ \$6,972,644.

ITEM 3. Amend subrule **79.1(8)**, paragraph “g,” as follows:

g. For services rendered after June 30, 2003 2005, the professional dispensing fee is equal to \$~~4.26~~ \$4.39.

ITEM 4. Amend subrule **79.1(16)**, paragraph “v,” subparagraph (2), as follows:

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(16)“v”(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to outpatient services for July 1, 2004 2005, through June 30, ~~2005~~ 2006, is \$~~2,727,424~~ \$2,809,247.

[Filed Emergency 6/17/05, effective 7/1/05]  
[Published 7/6/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4317B**

**HUMAN SERVICES  
DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments make a technical change to the source of the data file used in determining Medicaid drug reimbursement. A new contract for pharmacy claims processing took effect on June 25, 2005, as part of the Iowa Medicaid Enterprise. The new vendor, GHS Data Management, uses data from Medi-Span as the reference for classification and pricing of drugs. The Department’s previous vendor used data from First Data Bank. Since comparison of data from the two sources has revealed minimal differences, the Department has elected to change data sources. Conversion to a new data source would be costly for the new vendor and would delay the implementation of the contract beyond the expiration date of the existing contract.

These amendments do not provide for waivers in specified situations because the same data file should be used in all cases as a matter of equity and efficient administration.

The Council on Human Services adopted these amendments June 15, 2005.

The Department finds that notice and public participation are unnecessary and impracticable in that the effect on providers is minimal and the change must be in place when the contract takes effect. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public by allowing timely implementation of the new contract for the pharmacy point-of-sale system. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments shall be waived.

These amendments are also published herein under Notice of Intended Action as **ARC 4332B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective June 25, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are adopted.

Amend subrule 79.1(8) as follows:

Amend the introductory paragraph as follows:

**79.1(8)** Drugs. The amount of payment shall be based on several factors, subject to the upper limits in 42 CFR 447.331-332 as amended to April 18, 2002. The Medicaid program relies on information published by ~~First Data Bank~~ *Medi-Span* to classify drugs as brand-name or generic.

Amend paragraph “a,” introductory paragraph and subparagraph (1), as follows:

a. Effective ~~January 15~~ *June 25, 2005*, reimbursement for covered generic prescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined as the average wholesale price as published by ~~First Data Bank~~ *Medi-Span* less 12 percent, plus the professional dispensing fee specified in paragraph “g.”

Amend paragraph “b,” introductory paragraph and subparagraph (1), as follows:

b. Effective ~~January 15~~ *June 25, 2005*, reimbursement for covered brand-name prescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined as the average wholesale price as published by ~~First Data Bank~~ *Medi-Span*

less 12 percent, plus the professional dispensing fee specified in paragraph “g.”

[Filed Emergency 6/17/05, effective 6/25/05]

[Published 7/6/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4316B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments change the copayment requirements for drugs covered under the Medicaid program and clarify that copayments apply to all Medicaid-covered drugs.

The amendments increase from \$0.50 to \$1.00 the copayment for all brand-name drugs that cost the state \$10 or less. The copayment for higher-cost preferred brand-name drugs and generic drugs is also set at \$1.00, which represents a reduction of the copayment for some preferred brand-name drugs. Copayments for higher cost nonpreferred brand-name drugs remain unchanged. These changes avoid the previous higher copayments incurred by a member who switched to a brand-name drug to comply with the Department’s Preferred Drug List.

These amendments do not provide for waivers in specified situations because the amounts are set by the General Assembly.

The Council on Human Services adopted these amendments June 15, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2005 Iowa Acts, House File 841, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2005 Iowa Acts, House File 841, section 66.

These amendments are also published herein under Notice of Intended Action as **ARC 4331B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 42.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are adopted.

Amend subrule **79.1(13)**, paragraph “a,” as follows:

a. The recipient shall pay a copayment for *each covered prescription or refill of any covered drugs drug* as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) ~~The recipient shall pay \$1 One dollar for each covered generic drug prescription, including each refill drugs and preferred brand-name drugs. Any brand-name drug that is not subject to prior approval based on nonpreferred status on the preferred drug list published by the department pursuant to Iowa Code section 249A.20A shall be treated as a preferred brand-name drug.~~

(2) ~~The recipient shall pay \$0.50 for each covered brand-name drug prescription, including each refill, for which the cost to the state is \$10 or less.~~

(3) ~~The recipient shall pay \$1 One dollar for each covered nonpreferred brand-name drug prescription, including each refill, drugs for which the cost to the state is \$10.01 to less than \$25.~~

(4) ~~The recipient shall pay \$2 Two dollars for each covered nonpreferred brand-name drug prescription, including each refill, drugs for which the cost to the state is \$25.01 to \$50.~~

(5) ~~The recipient shall pay \$3 Three dollars for each covered nonpreferred brand-name drug prescription, including each refill, drugs for which the cost to the state is \$50.01 or more.~~

(6) For the purpose of this paragraph, the cost to the state is determined without regard to federal financial participation in the Medicaid program *or to any rebates received.*

[Filed Emergency 6/17/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4315B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2005 Iowa Acts, House File 841, section 66, the Department of Human Services amends Chapter 85, "Services in Psychiatric Institutions," and adopts new Chapter 92, "IowaCare," Iowa Administrative Code.

Chapter 92 implements the expansion of the Iowa Medicaid program directed by 2005 Iowa Acts, House File 841. This legislation took effect on July 1, 2005, pending the approval of waivers of federal Medicaid requirements that the Department has submitted to the Centers for Medicare and Medicaid Services.

2005 Iowa Acts, House File 841, provides that inpatient and outpatient services at the state mental health institutes shall be covered services for adults. Previously, coverage had been limited to persons under the age of 21, persons aged 65 or over, and persons covered through the Iowa Plan for Behavioral Health.

2005 Iowa Acts, House File 841, also creates a new Medicaid program called "IowaCare." IowaCare extends limited Medicaid eligibility to:

- People aged 19 through 64 whose household income is less than 200 percent of the federal poverty level and who do not qualify under any other Medicaid coverage group.
- Pregnant women whose gross income is under 300 percent of the federal poverty level and whose allowable medical expenses bring their countable income to below 200

percent of the federal poverty level and to their newborn children.

Eligibility for IowaCare is determined on a 12-month basis, based on an applicant's declared circumstances. Retroactive eligibility is limited to one month. Members must pay a premium for IowaCare coverage, based on 2 percent of the poverty-level increment if the household's income is at or below 100 percent of the federal poverty level or 5 percent of the poverty-level increment if the household's income is more than 100 percent of the federal poverty level. A member must pay for at least four months of premiums. On a month-by-month basis, a member may pay a zero premium due to hardship.

Medicaid services for IowaCare members in the 19-to-64 age group must be provided by a member of the IowaCare provider network, which is comprised of:

- Broadlawns Medical Center in Des Moines.
- The University of Iowa Hospitals and Clinics.
- The state mental health institutes at Cherokee, Clarinda, Independence, and Mount Pleasant, exclusive of the units providing substance abuse treatment, services to geropsychiatric patients, or treatment for sexually violent predators.

Under IowaCare, covered services are initially limited to the following services, as available from the network providers:

- Inpatient and outpatient hospital care.
- Physician and advanced registered nurse practitioner services.
- Certain dental services.
- Certain pharmacy services.
- Transportation to and from the network provider.

IowaCare places no obligation on the provider network to offer these services or to change the availability of services, including availability based on residence.

For IowaCare members qualifying as pregnant women, the covered services include pregnancy-related services and newborn care. Women who live in Cedar, Clinton, Iowa, Johnson, Keokuk, Louisa, Muscatine, Scott, or Washington County must receive these services from the University of Iowa Hospitals and Clinics. Women who live in other counties may receive these services from any provider participating in the Iowa Medicaid program.

IowaCare is not an entitlement program. Therefore, when available funds are committed before the end of the fiscal year, the program will be discontinued until funding is received for the next fiscal year. Approval of applications will be suspended, and applications may be approved for only partial benefits.

These amendments do not provide for waivers in specified situations. The Department has general procedures for requesting an exception to policy at 441—1.8(17A,217).

The Council on Human Services adopted these amendments June 15, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2005 Iowa Acts, House File 841, section 66, which authorizes the Department to adopt rules without notice and public participation.

The Department finds that these amendments confer a benefit. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments should be waived.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are also published herein under Notice of Intended Action as **ARC 4330B** to allow for public comment.

These amendments are intended to implement 2005 Iowa Acts, House File 841, divisions I and II, and section 15, subsection 1.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 85**, preamble, as follows:

## PREAMBLE

Inpatient psychiatric services are provided in three types of psychiatric facilities in addition to general hospitals with psychiatric units: acute care psychiatric hospitals, psychiatric medical institutions for children, and nursing facilities for the mentally ill. *Except for services in the state mental health institutes*, Medicaid ~~only~~ covers *only* persons under the age of 21 and ~~the age of persons aged 65~~ and older in acute care psychiatric hospitals. *Medicaid covers only* persons under the age of 21 in psychiatric medical institutions for children, and *only* persons aged 65 and older in nursing facilities for the mentally ill. These rules establish conditions of participation for providers, record-keeping requirements, reimbursement methodologies, and client eligibility requirements.

ITEM 2. Amend rule 441—85.1(249A) as follows:

Amend the introductory paragraph as follows:

**441—85.1(249A) Acute care in psychiatric hospitals.** ~~Acute care in a psychiatric hospital is covered for persons aged 65 and over and for persons under the age of 21.~~ These rules do not apply to general hospitals with psychiatric units.

Amend subrule 85.1(1), introductory paragraph, as follows:

**85.1(1)** Psychiatric hospitals serving persons aged ~~65~~ 21 and older. A psychiatric hospital serving persons aged ~~65~~ 21 and older shall meet the federal criteria for an institution for mental disease and shall be licensed pursuant to department of inspections and appeals rule 481—51.36(135B). An out-of-state facility shall be licensed as a psychiatric hospital, shall meet the federal criteria for an institution for mental disease, and shall be certified to participate in the Medicare program. An institution is an institution for mental disease only if its overall character is that of a facility established and maintained primarily for the care and treatment of persons with mental diseases. The following guidelines are used by the department in evaluating the overall character of a facility. These guidelines are all useful in identifying institutions for mental disease; however, no single guideline is necessarily determinative in any given case.

ITEM 3. Adopt **new** rule 441—85.8(249A,81GA,HF841) as follows:

**441—85.8(249A,81GA,HF841) Eligibility of persons aged 21 through 64.**

**85.8(1) Facility.** Acute care in a psychiatric hospital is covered for persons aged 21 through 64 only at the state mental health institutes at Cherokee, Clarinda, Independence, and Mount Pleasant.

**85.8(2) Basis of eligibility.** To be eligible for payment for the cost of care provided by one of the covered facilities, a person aged 21 through 64 must be either:

a. Eligible for one of the coverage groups listed in 441—75.1(249A); or

b. Eligible under the IowaCare program pursuant to 441—Chapter 92.

**85.8(3) Period of eligibility.** A person is considered to be an inpatient until unconditionally discharged. Coverage extends until the last day of the month of discharge.

**85.8(4) Extent of eligibility.**

a. While on inpatient status, a person eligible under a coverage group listed in 441—75.1(249A) is entitled to the full scope of Medicaid benefits.

b. While on inpatient status, a person eligible under the IowaCare program is entitled to the services listed at 441—92.8(249A,81GA,HF841).

ITEM 4. Adopt the following **new** 441—Chapter 92 in Title VIII, “Medical Assistance”:

CHAPTER 92  
IOWACARE

## PREAMBLE

This chapter defines and structures the IowaCare program administered by the department pursuant to 2005 Iowa Acts, House File 841, divisions I and II. It is the department's intent that all state expenditures under the IowaCare program shall qualify for federal financial participation under Title XIX of the Social Security Act (Medical Assistance or Medicaid), as allowed by waivers of Title XIX requirements granted by the Secretary of the U.S. Department of Health and Human Services pursuant to Section 1115 of the Social Security Act (42 U.S.C. §1315). Therefore, this chapter shall not be effective until waivers necessary for federal financial participation become effective and shall remain in effect only as long as such waivers are effective. Further, this chapter shall be construed to comply with the requirements of Title XIX or with the terms of any applicable waiver of Title XIX requirements. To the extent that these rules may be found to be inconsistent with any applicable requirement of Title XIX or the terms of any applicable waiver, the requirements of Title XIX or the terms of the waiver shall prevail.

**441—92.1(249A,81GA,HF841) Definitions.**

“Applicant” means an individual who applies for medical assistance under the IowaCare program described in this chapter.

“Clean claim” means a claim that can be adjudicated in the Medicaid claims payment system to result in either a paid or denied status.

“Department” means the Iowa department of human services.

“Dependent child” means the child or stepchild of an applicant or member who is living in the applicant's or member's home and is under the age of 18 or is 18 years of age and will graduate from high school or an equivalent level of vocational or technical school or training leading to a certificate or diploma before reaching the age of 19. Correspondence school is not an allowable program of study. “Dependent child” shall also include a child attending college or a school of higher learning beyond high school if the parents will claim the child as a dependent on their state or federal income tax return.

“Federal poverty level” means the poverty income guidelines revised annually and published in the Federal Register by the U.S. Department of Health and Human Services.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

“Group health insurance” means any plan of or contributed by an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer’s employees, former employees, or the families of the employees or former employees.

“IowaCare” means the medical assistance program explained in this chapter.

“Mandatory months” means the first four consecutive months of a certification period.

“Medical expansion services” means the services described in 2005 Iowa Acts, House File 841, section 6.

“Member” means an individual who is receiving assistance under the IowaCare program described in this chapter.

“Newborn” means an infant born to a woman as defined in paragraph 92.2(1)“b.”

**441—92.2(249A,81GA,HF841) Eligibility.** IowaCare eligibility shall be determined according to the requirements of rules 441—75.2(249A) to 441—75.4(249A), 441—75.7(249A), 441—75.10(249A), 441—75.12(249A), and 441—75.21(249A) and the provisions of this rule.

**92.2(1) Persons covered.** Medical assistance under IowaCare shall be available to the following people as provided in this chapter:

a. Persons 19 through 64 years of age who:

(1) Are not eligible for medical assistance under 441—subrules 75.1(1) through 75.1(40); and

(2) Have countable income at or below 200 percent of the federal poverty level.

b. Pregnant women whose:

(1) Gross countable income is below 300 percent of the federal poverty level; and

(2) Allowable medical expenses reduce their countable income to 200 percent of the federal poverty level or below.

c. Newborn children born to women defined in paragraph “b.”

**92.2(2) Citizenship.** To be eligible for IowaCare benefits, a person must meet the requirements in 441—paragraph 75.11(2)“a.” A person who claims a qualified alien status shall provide documentation of this status.

**92.2(3) Other disqualification.** A person who has been disqualified for Medicaid for reasons other than excess income or lack of categorical eligibility is not eligible for IowaCare benefits.

**92.2(4) Group health insurance.** A person who has access to group health insurance is not eligible for IowaCare. An applicant or member shall not be considered to have access to group health insurance if any of the following conditions exist:

a. The applicant or member is not enrolled in the available group health plan and states that:

(1) The coverage is unaffordable; or

(2) Exclusions for preexisting conditions apply; or

(3) The needed services are not services covered by the plan.

b. The applicant or member is enrolled in a group health plan but states that:

(1) Exclusions for preexisting conditions apply; or

(2) The needed services are not covered by the plan; or

(3) The limits of benefits under the plan have been reached.

**92.2(5) Payment of assessed premiums.** As a condition of eligibility for IowaCare, an applicant or member must pay premiums in accordance with 441—92.7(249A,81GA,HF841). Premiums incurred and unpaid from a previous certification period must be paid in full before an applicant can establish new eligibility under this chapter.

**92.2(6) Availability of funds.** Eligibility for IowaCare shall not be approved when the department has determined that there are insufficient funds available to pay for additional enrollment, in accordance with 441—92.14(249A,81GA,HF841).

**441—92.3(249A,81GA,HF841) Application.** Medicaid application policies in 441—76.1(249A) apply to IowaCare except as follows:

**92.3(1)** An application for IowaCare may also be submitted on Comm. 239, IowaCare Application. An applicant who submits an application on another form allowed under 441—76.1(249A) shall also sign Form 470-4194, IowaCare Premium Agreement.

**92.3(2)** A new application is required for each 12-month certification period.

**441—92.4(249A,81GA,HF841) Application processing.** Department staff shall process IowaCare applications. The department shall base eligibility decisions primarily on information declared by the applicant. A face-to-face interview is not required.

**92.4(1) Verification.** Applicants seeking eligibility under 92.2(1)“b” shall provide verification of medical expenses as required under 92.5(5)“b.” Applicants shall not be required to provide verification of income, citizenship, household members, disability, social security number, age, HAWK-I premium, group health insurance, or pregnancy, unless the verification is specifically requested in writing.

a. The department shall notify the person in writing of any further verification requested. The person shall have five working days to supply the requested information. The local office may extend the deadline for a reasonable period when the person is making every effort but is unable to secure the required information or verification from a third party.

b. Failure of the person to supply requested information or refusal by the person to authorize the department to secure the information from other sources shall serve as a basis for denial of an application or cancellation of IowaCare benefits.

**92.4(2) Screening for full Medicaid.** The department shall screen each application for eligibility under coverage groups listed in 441—75.1(249A). If the applicant is eligible under another coverage group, the IowaCare application shall be considered an application for that coverage group.

**92.4(3) Time limit for decision.** The department shall make a determination of approval or denial as soon as possible, but no later than three working days after the filing date of the application, unless:

a. One or more conditions listed in 441—subrules 76.3(1) through 76.3(6) exist; or

b. The application is being processed for Medicaid eligibility under a coverage group listed in 441—75.1(249A).

**441—92.5(249A,81GA,HF841) Determining income eligibility.** The department shall determine the income of an applicant’s household as of the date of decision. To be eligible, the household’s income minus allowable deductions shall not exceed 200 percent of the federal poverty level for the household size.

**92.5(1) Household size.** The household size shall include the applicant and the applicant’s dependent or unborn children and spouse living in the same home, except when a dependent child or spouse has elected to receive supplemental security income under Title XVI of the Social Security Act. A person who is absent from the home shall not be included in the household size, unless the absence is temporary.

a. An applicant’s spouse shall not be considered absent from the home when:

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(1) The spouse's absence is due solely to a pattern of employment, including active duty in the uniformed services of the United States.

(2) The spouse is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday.

b. The conditions described in 441—paragraph 75.53(4)“b” shall be applied to determine whether a person's absence is temporary.

**92.5(2)** Self-declaration of income. Applicants shall self-declare the household's future unearned and earned income based on their best estimate.

a. Applicants who receive income on a regular basis shall declare their household's monthly income as described at 92.5(3) and 92.5(4).

b. Applicants who are self-employed, receive their income on an irregular basis, or are not currently employed shall declare their household's anticipated yearly income as described in 92.5(3) and 92.5(4).

**92.5(3)** Earned income. All earned income as defined in this subrule that is received by a person included in the household size shall be counted except for the earnings of a child who is a full-time student as defined in 441—subparagraphs 75.54(1)“b”(1), (2), and (3). Earned income shall include income in the form of a salary, wages, tips, or profit from self-employment.

a. For income from salary, wages, or tips, earned income shall mean the total gross amount of income irrespective of the expenses of employment.

b. For self-employment income, earned income shall mean the net profit from self-employment, defined as gross income less the costs of producing the income.

**92.5(4)** Unearned income. The following unearned income of all household members shall be counted:

- a. Unemployment compensation.
- b. Child support.
- c. Alimony.
- d. Social security and railroad retirement benefits.
- e. Worker's compensation and disability payments.
- f. Benefits paid by the Veterans Administration to disabled members of the armed forces or survivors of deceased veterans.

**92.5(5)** Deductions. The department shall determine a household's countable income by deducting the following from the household's self-declared income:

a. Twenty percent of the household's self-declared earned income.

b. For women applying under 92.2(1)“b,” medical expenses incurred for a person included in the household size that are unpaid and not subject to payment by a third party. Verification of the unpaid expenses must be provided in order to receive the deduction. The medical expenses that can be deducted are:

- (1) Health insurance premiums, deductibles, or coinsurance charges; and
- (2) Medical and dental expenses.

**92.5(6)** Disregard of changes. A person found to be income-eligible upon application or recertification of eligibility shall remain income-eligible for 12 months regardless of any change in income or household size.

**441—92.6(249A,81GA,HF841)** **Effective date.** The department shall issue Form 470-4164, IowaCare Medical Card, to persons determined to be eligible for IowaCare benefits.

**92.6(1)** Certification period. IowaCare eligibility shall be effective on the first day of the month of application or the first day of the month all eligibility requirements are met, whichever is later. Eligibility shall continue for 12 consecutive months or, for women and newborns eligible under 92.2(1)“b” or “c,” until 60 days after the birth of the child.

**92.6(2)** Retroactive eligibility. IowaCare benefits shall also be available for the month preceding the month in which the application is filed to applicants who meet the following conditions:

a. The applicant makes the request for retroactive eligibility at the time of application and before the eligibility determination.

b. The applicant has received Medicaid expansion services from a provider within the Medicaid expansion network during the month for which retroactive eligibility is sought.

c. The applicant would have been eligible for IowaCare in the month for which retroactive eligibility is sought if application had been made in that month.

**92.6(3)** Care provided before eligibility. No payment shall be made for medical care received before the effective date of eligibility.

**441—92.7(249A,81GA,HF841)** **Financial participation.**

In addition to the copayments required by 441—subrule 79.1(13), IowaCare members (with the exception of newborns eligible pursuant to 92.2(1)“c”) shall be assessed a sliding-scale monthly premium. A member shall be responsible for paying the premium for the first four months of a certification period regardless of continued enrollment during the four-month period, and for each month of continued enrollment after the first four months.

**92.7(1)** Premium amount. The monthly premium amount shall be established for a 12-month period beginning with the first month of eligibility, based on projected monthly income for the 12-month period.

a. The monthly premium amount is based on the household's countable monthly income as a percentage of the federal poverty level for a household of that size. The premium amounts are based on this percentage, as follows:

When the household's income is at or below:	Each member's premium amount is:
10% of federal poverty level	\$ 0
20% of federal poverty level	\$ 1
30% of federal poverty level	\$ 3
40% of federal poverty level	\$ 4
50% of federal poverty level	\$ 6
60% of federal poverty level	\$ 7
70% of federal poverty level	\$ 9
80% of federal poverty level	\$11
90% of federal poverty level	\$12
100% of federal poverty level	\$14
110% of federal poverty level	\$39
120% of federal poverty level	\$43
130% of federal poverty level	\$47
140% of federal poverty level	\$51
150% of federal poverty level	\$55
160% of federal poverty level	\$59
170% of federal poverty level	\$63
180% of federal poverty level	\$67
190% of federal poverty level	\$71
200% of federal poverty level	\$75

b. The listed premium amount is calculated based on the lowest income level in each 10 percent increment for a one-person household. Premiums for households with income at or below 100 percent of the poverty level are 2 percent of the applicable income level; premiums for households with in-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

come over 100 percent of the poverty level are 5 percent of the applicable income level. The department will update these amounts annually on July 1 using the latest federal poverty level guidelines.

c. The cost of premiums paid for HAWK-I shall be deducted from the premium assessed according to this subrule.

d. The monthly premium established for a 12-month period shall not be increased due to an increase in income or a change in household size.

e. The premium may be reduced prospectively during the 12-month period if the member declares a reduction in projected average monthly income or an increase in household size or is granted a hardship exemption.

**92.7(2) Billing and payment.** Form 470-4165, IowaCare Billing Statement, shall be used for billing and collection.

a. Method of payment. Members shall submit premium payments to the following address: Iowa Medicaid Enterprise Revenue Collection Unit, P.O. Box 310194, Des Moines, Iowa 50331-0194.

b. Due date. When the department notifies the member of the amount of the premiums, the member shall pay any premiums due as follows:

(1) The premium for each month is due the last calendar day of the month the premium is to cover. EXCEPTION: The premiums for the months covered in the initial billing are due the last calendar day of the following month.

(2) If the last calendar day falls on a weekend or a state holiday, payment is due the first working day following the holiday or weekend.

c. Application of payment. The department shall apply premium payments received to the oldest unpaid month forward. When premiums for all months have been paid, the department shall hold any excess and apply it to any months for which eligibility is subsequently established.

**92.7(3) Hardship exemption.** A member who submits a statement on Form 470-4165, IowaCare Billing Statement, or Form 470-4185, IowaCare Premium Notice Reminder, indicating that payment of the premium will be a financial hardship shall be exempted from premium payment for that month.

**92.7(4) Failure to pay premium.** If the member fails to pay the assessed premium or to declare a hardship by the date the premium is due, the department shall cancel IowaCare benefits effective the last day of the next calendar month. A member whose IowaCare benefits are canceled due to nonpayment of premiums must reapply to establish IowaCare eligibility.

**441—92.8(249A,81GA,HF841) Benefits.** Under IowaCare, payment will be made only for services and providers as specified in this rule. No payment will be made for any service provided elsewhere or by another provider.

**92.8(1) Provider network.** Except as provided in 92.8(3), IowaCare members shall have medical assistance only for services provided to the member at:

- a. The University of Iowa Hospitals and Clinics; or
- b. Broadlawns Medical Center in Des Moines; or
- c. A state mental health institute, exclusive of the units providing substance abuse treatment, services to geropsychiatric patients, or treatment for sexually violent predators.

**92.8(2) Covered services.** Services shall be limited to the services covered by the Iowa Medicaid program pursuant to 441—Chapter 78, 441—79.9(249A), and 441—Chapter 85, Division I. All conditions of service provision shall apply in the same manner as under the regular Iowa Medicaid program and pursuant to 441—Chapter 78, 441—79.3(249A),

441—79.5(249A), 441—79.6(249A), 441—79.8(249A) through 441—79.14(249A), and applicable provider manuals. These conditions include, but are not limited to, prior authorization requirements and exclusions for cosmetic procedures or those otherwise determined not to be required to meet the medical need of the patient.

**92.8(3) Obstetric and newborn coverage.** IowaCare members who qualify under 92.2(1)“b” or “c” are eligible only for the following services:

a. Covered services for pregnant women shall be limited to:

(1) Inpatient hospital services when the diagnosis related group (DRG) submitted for payment is between 370 and 384 and the primary or secondary diagnosis code is V22 through V24.9.

(2) Outpatient hospital services when the ambulatory patient group (APG) submitted for payment is between 385 and 3917 and the primary or secondary diagnosis code is V22 through V24.9.

(3) Services from another provider participating in Medicaid if the claim form reflects that the primary or secondary diagnosis code is V22 through V24.9.

b. Newborns will be eligible while hospitalized and for a period not to exceed 60 days from the date of birth. Newborns who qualify for eligibility in the regular Medicaid program will be changed to that eligibility type and will have all benefits of the regular Medicaid program.

c. For persons who reside in Cedar, Clinton, Iowa, Johnson, Keokuk, Louisa, Muscatine, Scott, or Washington County, the services listed in this subrule are covered only when provided by the University of Iowa Hospitals and Clinics.

d. Persons who do not live in Cedar, Clinton, Iowa, Johnson, Keokuk, Louisa, Muscatine, Scott, or Washington County may obtain the services listed in this subrule from any provider that participates in Iowa Medicaid.

**441—92.9(249A,81GA,HF841) Claims.** Claims for Medicaid expansion services provided to IowaCare members shall be submitted to the Iowa Medicaid Enterprise, P.O. Box 150001, Des Moines, Iowa 50315, as required by 441—Chapter 80. To facilitate tracking of expenditures, clean claims for IowaCare services shall be submitted to the Iowa Medicaid enterprise within 20 days from ending date of service.

**441—92.10(249A,81GA,HF841) Reporting changes.**

**92.10(1) Reporting requirements.** A member shall report any of the following changes no later than ten calendar days after the change takes place:

- a. The member enters a nonmedical institution, including but not limited to a penal institution.
- b. The member abandons Iowa residency.
- c. The member obtains other health insurance coverage.

**92.10(2) Untimely report.** When a change is not timely reported, any incorrect program expenditures shall be subject to recovery in accordance with 441—92.13(249A, 81GA,HF841).

**92.10(3) Effective date of change.** After assistance has been approved, changes reported during the month shall be effective the first day of the next calendar month unless:

- a. Timely notice of adverse action is required as specified in 441—subrule 7.7(1); or
- b. The certification has expired.

**441—92.11(249A,81GA,HF841) Reapplication.** A new application is required when a member's 12-month certifica-

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tion period has expired or a member is seeking to regain eligibility after cancellation.

**441—92.12(249A,81GA,HF841) Terminating eligibility.** IowaCare eligibility shall end when any of the following occur:

**92.12(1)** The certification period ends.

**92.12(2)** The member becomes eligible for a medical assistance coverage group under 441—subrules 75.1(1) through 75.1(40).

**92.12(3)** The member does not pay premiums as required by 441—92.7(249A,81GA,HF841).

**92.12(4)** The member no longer meets the nonfinancial eligibility requirements under 441—92.5(249A,81GA,HF841).

**92.12(5)** The member is found to have been ineligible at the time the eligibility determination was made due to member misrepresentation or member or agency error.

**92.12(6)** The member dies.

**441—92.13(249A,81GA,HF841) Recovery.** The department shall recover from a member all Medicaid funds incorrectly expended on behalf of the member in accordance with 441—76.12(249A). Any funds recovered from third parties, including Medicare, by a provider other than a state mental health institute shall be submitted to the Iowa Medicaid enterprise, and an adjustment shall be made to a previously submitted claim.

**441—92.14(249A,81GA,HF841) Discontinuance of the program.** IowaCare is operated statewide and is funded on a fiscal-year basis (from July through June). When funds are expected to be expended before the end of the fiscal year, enrollment of new members into the program will be discontinued or limited to a reduced scope of services until funding is received for the next fiscal year.

**92.14(1) Suspension of enrollment.** To ensure equitable treatment, applications shall be approved on a first-come, first-served basis and enrollment will be suspended when the likely costs of caring for those already enrolled will exhaust the available funding during the year. “First-come, first-served” status is determined by the date the application is approved for eligibility and entered into the computer system.

**92.14(2) Enrollment for limited services.** Eligibility or payment for services received cannot be approved beyond the amount of funds available. Because funds are limited, applications may be approved for a reduced scope of services.

**441—92.15(249A,81GA,HF841) Right to appeal.** Decisions and actions by the department regarding eligibility or services provided under this chapter may be appealed pursuant to 441—Chapter 7. However, households will not be entitled to an appeal hearing if the sole basis for denying or limiting services is due to discontinuance or limitation of the program pursuant to 441—92.14(249A,81GA,HF841).

These rules are intended to implement 2005 Iowa Acts, House File 841, divisions I and II.

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## ARC 4314B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 217.6 and 249A.4 and 2004 Iowa Acts, chapter 1175, section 112, the Department of Human Services adopts new Chapter 91, “Medicare Drug Subsidy,” Iowa Administrative Code.

These rules provide for state eligibility determination for a federal subsidy to reduce or eliminate costs associated with the Medicare drug benefit created by Public Law 108-173, the Medicare Modernization Act of 2003. Under this legislation, state Medicaid agencies are required to accept applications for the Medicare drug subsidy, determine eligibility, and maintain cases for applicants who are determined eligible for the subsidy.

The subsidy itself is administered by the Social Security Administration and is not part of the Medicaid program. The Social Security Administration refers to the subsidy as “extra help for Medicare prescription drug costs.” The subsidy is intended to assist low-income people with payment for premiums, copayments, deductibles, and coverage gaps in the new Medicare Part D benefit that is scheduled to take effect on January 1, 2006.

These rules do not provide for waivers in specified situations. Individuals who believe themselves disadvantaged by these procedural requirements may request a waiver under rule 441—1.8(17A,217). The Department has no authority to waive federal eligibility standards for the subsidy.

The Council on Human Services adopted these rules on June 15, 2005.

2004 Iowa Acts, chapter 1175, section 112(6), allows the Department to adopt emergency rules if necessary to comply with federal Medicaid requirements. In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because federal regulations require states to have an eligibility determination process in place by July 1, 2005.

The Department finds that these rules confer a benefit on the public by providing another avenue to qualify for a Medicare drug benefit subsidy. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules shall be waived.

These rules are also published herein under Notice of Intended Action as **ARC 4329B** to allow for public comment.

These rules are intended to implement Iowa Code sections 217.6 and 249A.4 and Section 1935(a) of the Social Security Act (42 USC § 1396u-5).

These rules became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is adopted.

Adopt the following **new** 441—Chapter 91 under Title VIII, “Medical Assistance”:

HUMAN SERVICES DEPARTMENT[441](cont'd)

CHAPTER 91  
MEDICARE DRUG SUBSIDY

PREAMBLE

Public Law 108-173, the Medicare Modernization Act of 2003, created a prescription drug benefit for Medicare beneficiaries (Medicare Part D) and a subsidy to reduce or eliminate costs associated with the Medicare drug benefit for persons with limited income and resources. The Act requires both the federal Social Security Administration and state Medicaid agencies to accept and adjudicate subsidy applications. The Social Security Administration refers to the subsidy as "extra help for Medicare prescription drug costs." This chapter implements procedures for the department of human services, the state Medicaid agency in Iowa, to carry out these duties.

**441—91.1(249A) Definitions.** As used in this chapter:

"Applicant" means a person applying for a Medicare drug subsidy through the department and includes a responsible person or authorized representative acting for an applicant, except for the purposes of subrule 91.2(2).

"Application" or "Medicare drug subsidy application" means the federal Social Security Administration's Form SSA-1020B-OCR-SM, Application for Help with Medicare Prescription Drug Plan Costs, accompanied by the department's Form 470-4159, Authorization for Department to Process.

"Authorized representative" means a person representing an applicant or recipient as described in 441—paragraph 76.1(7)"b."

"Department" means the Iowa department of human services and includes any local office of the department.

"Local office" means a department office as described in 441—subrule 1.4(2).

"Recipient" means a person receiving a Medicare drug subsidy based on an application filed with the department and includes a responsible person or authorized representative acting for a recipient, except for the purposes of subrule 91.2(2).

"Responsible person" means a person acting on an applicant's or recipient's behalf as described at 441—paragraph 76.1(7)"a."

**441—91.2(249A) Application.** Any person may apply for the Medicare drug subsidy through the department.

**91.2(1) Date, method, and place of filing.** An application is considered filed on the date an identifiable signed application is received and date-stamped in any local office.

a. When an application is delivered to a closed local office, the application will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open.

b. A copy of an application received by fax shall be given the same effect as the original application.

**91.2(2) Identifiable application and signature.**

a. An identifiable application is an application that contains:

- (1) The legible name and address of the applicant; and
- (2) The signature of the applicant, a responsible person, or an authorized representative on both Form SSA-1020B-OCR-SM, Application for Help with Medicare Prescription Drug Plan Costs, and Form 470-4159, Authorization for Department to Process.

b. If an authorized representative signed the application forms on behalf of an applicant, the applicant or a responsible

person must also sign the application forms before the application can be approved.

**91.2(3) Right to withdraw.** After an application has been filed, the applicant may withdraw the application at any time before the eligibility determination.

a. The applicant may request that the application be withdrawn entirely or may, before the date the application is processed, request withdrawal for any month covered by the application.

b. The local office shall send a Notice of Decision, Form 470-0485, 470-0486, 470-0486(S), or 470-0490, to the applicant confirming the request to withdraw the application.

**441—91.3(249A) Eligibility determination.** The department shall determine eligibility for the Medicare drug subsidy pursuant to Section 1860D-14 of the Social Security Act and implementing federal regulations at 20 CFR Part 418. The department shall base decisions with respect to initial and ongoing eligibility primarily on information furnished by the applicant or recipient.

**91.3(1) Cooperation.** An applicant must cooperate with the department in the application process. Cooperation may include providing additional information or verification of information, participating in an interview, or signing documents. Failure to cooperate in the application process shall be a basis for denial of an application.

**91.3(2) Additional information and verification.** The department shall notify the applicant or recipient in writing of any additional information or verification that is required to maintain or establish eligibility. This notice shall be delivered to the applicant or recipient by personal delivery, mail, or facsimile transmission.

a. The applicant or recipient shall have five working days to supply the information or verification requested by the department. The local office may extend the deadline for a reasonable period when the applicant or recipient is making every effort to secure the required information or verification from a third party but has been unable to do so.

b. Failure of the applicant or recipient to supply the information or verification, or refusal by the applicant or recipient to authorize the department to secure the information or verification from other sources, shall serve as a basis for denial of an application or cancellation or reduction of the Medicare drug subsidy.

**91.3(3) Interviews.** At the discretion of the local office, an interview with the applicant or recipient may be required when processing the initial application or at the time of any review of eligibility.

a. The department shall notify the applicant or recipient in writing of the date, time, and method of any required interview. This notice shall be delivered to the applicant or recipient by personal delivery, mail, or facsimile transmission. Interviews may be rescheduled at the request of the applicant or recipient without written notice.

b. Failure of the applicant or recipient to participate in a scheduled interview shall serve as a basis for denial of an application or cancellation or reduction of the Medicare drug subsidy.

**441—91.4(249A) Notice of decision.** The department shall notify the applicant or recipient in writing of any decision regarding the applicant's or recipient's subsidy eligibility or level of subsidy.

**91.4(1)** The department shall issue a written notice of decision to an applicant by the next working day following a determination of subsidy eligibility and level of subsidy.

HUMAN SERVICES DEPARTMENT[441](cont'd)

**91.4(2)** The department shall give a recipient timely and adequate written notice as provided in 441—subrule 7.7(1) when any decision or action is taken that adversely affects subsidy eligibility or the level of subsidy.

**91.4(3)** In the circumstances described in 441—subrule 7.7(2), the department may dispense with timely notice but shall send adequate notice no later than the effective date of action.

**441—91.5(249A) Effective date.** A Medicare prescription drug subsidy shall be effective beginning with the first day of the month of application or the first day of the first month in which all eligibility requirements are met, whichever is later, but no earlier than January 1, 2006.

**441—91.6(249A) Changes in circumstances.**

**91.6(1)** Responsibility to report changes. A Medicare drug subsidy applicant or recipient shall timely report to the department any changes in the following circumstances:

- a. Care of dependents.
- b. Household composition.
- c. Household income.
- d. Household resources.
- e. Marital status.
- f. Medicare eligibility or enrollment.
- g. Place of residence.

**91.6(2)** Timely report. A report shall be considered timely when received in the local office within ten days from the date the change is known to a recipient and within five days from the date the change is known to an applicant.

**91.6(3)** Effective date of change. Changes in eligibility or level of subsidy shall be effective the month following the month in which the change is reported.

**441—91.7(249A) Reinvestigation.** The department shall reinvestigate eligibility as often as the recipient's circumstances indicate, but in no instance shall the period between reinvestigations exceed 12 months.

**91.7(1)** Application requested. When requested to do so by the department, the recipient shall complete the Medicare drug subsidy application as part of the reinvestigation process. The application shall be completed within five working days from the date a written request is issued. Failure to complete the application shall be a basis for cancellation or reduction of the subsidy.

**91.7(2)** Additional information requested. The recipient shall supply additional information needed to establish eligibility or level of subsidy within five working days from the date a written request is issued.

a. The recipient shall give written permission for the release of information when the recipient is unable to furnish information needed to establish eligibility.

b. Failure to supply requested information or authorize the department to secure the information from other sources shall be a basis for cancellation or reduction of the subsidy.

**441—91.8(249A) Appeals.** An applicant or recipient shall have the right to appeal any adverse action by the department regarding the Medicare drug subsidy, pursuant to 441—Chapter 7.

[Filed Emergency 6/17/05, effective 7/1/05]  
[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4313B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 2005 Iowa Acts, House File 825, section 29, the Department of Human Services amends Chapter 150, "Purchase of Service," and Chapter 156, "Payments for Foster Care and Foster Parent Training," Iowa Administrative Code.

These amendments:

- Clarify conditions for initiation of a contract proposal when the Department uses a request for proposal to select service providers.
- Allow the Department to require performance measures in a purchase of social service agency contract.
- Increase the maximum payments to social service providers (for adoption home studies, family planning, supervised apartment living, and shelter care) by 3 percent.
- Increase the foster family home payment schedule to 65 percent of the U.S. Department of Agriculture's estimate of the cost to raise a child in the Midwest.
- Change the payment provisions for shelter care by removing the option of payment of a monthly fixed sum and by substituting procedures for a guaranteed minimum payment as provided by the Department in a request for proposal.
- Remove obsolete language allocating child care funds for foster parents and requiring a custodial parent's signature to assign child support payments to the Department.
- Update organizational names and form references.

On April 15, 2005, the Department issued Request for Proposal BDPS-05-063 to select competitive bids for emergency juvenile shelter care. The intent of the request is to contract with a finite number of programs that will guarantee shelter care availability across Iowa and to provide a more stable source of income for those programs. The Department intends to award one-year contracts projected to begin on July 1, 2005, or August 1, 2005. The Department expects to contract for approximately 325 shelter beds statewide and to guarantee payment for approximately 240 beds. Contracts for shelter care services that were in effect for state fiscal year 2005 will not be renewed unless the program is a successful bidder under the request for proposal.

These amendments do not provide for waivers in specified situations. Individuals or agencies that believe themselves disadvantaged by these rules may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on June 15, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2005 Iowa Acts, House File 825, section 29, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2005 Iowa Acts, House File 825, section 29.

These amendments are also published herein under Notice of Intended Action as **ARC 4328B** to allow for public comment.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code sections 234.6 and 234.35 and 2005 Iowa Acts, House File 825, section 29.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 441—150.3(234) as follows:

Amend subrule 150.3(1), introductory paragraph, as follows:

**150.3(1)** Initiation of contract proposal. *When the department issues a request for proposal to select providers, the process and conditions for approving contract proposals shall be as specified in the request, and the department shall not be required to contract with a provider that is not selected. Otherwise, the following procedures for initiation of contract proposals shall apply.*

Amend subrule **150.3(3)** by adopting new paragraph “t” as follows:

t. Performance measures. The department may require performance measures.

Amend subrule **150.3(5)**, paragraph “p,” as follows:

Rescind subparagraph (1) and adopt the following new subparagraph in lieu thereof:

(1) The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. For the fiscal year beginning July 1, 2005, the maximum reimbursement rate shall be \$86.20 per day, based on a 365-day year. If the department reimburses the provider at less than the maximum rate, the department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost plus the inflation factor or to the maximum reimbursement rate, whichever is less.

Amend subparagraph (2) as follows:

Amend the introductory paragraph as follows:

(2) For the fiscal year beginning July 1, 2004 2005, the maximum reimbursement rates for services provided under a purchase of social service agency contract (adoption, shelter care, family planning, and supervised apartment living) shall be ~~the same as increased to 3 percent over the rates in effect on June 30, 2004 2005, except or increased to the provider's actual and allowable cost plus inflation, whichever is less.~~ *The rates may also be adjusted under any of the following circumstances:*

Amend numbered paragraph “1,” introductory paragraph, as follows:

1. If a new service was added after June 30, 2004 2005, the initial reimbursement rate for the service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

Rescind and reserve numbered paragraphs “3” and “4.”

ITEM 2. Amend rule **441—156.1(234)** as follows:

Rescind the definition of “regional administrator.”

Adopt the following new definition of “service area manager” in alphabetical order:

“Service area manager” means the department employee or designee responsible for managing department offices within a department service area and for implementing policies and procedures of the department.

ITEM 3. Amend subrule 156.2(3) as follows:

**156.2(3)** The custodial parent shall assign child support payments to the department on ~~Form CS-3104-0, Assignment of Support Payments Foster Care.~~

ITEM 4. Amend rule 441—156.6(234) as follows:

Amend subrule 156.6(1) as follows:

**156.6(1)** Basic rate. A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

<u>Age of child</u>	<u>Daily rate</u>	
0 through 5	\$14.28	\$14.91
6 through 11	\$15.07	\$15.58
12 through 15	\$16.83	\$17.18
16 and over	\$16.83	\$17.27

Amend subrule **156.6(4)**, paragraph “g,” as follows:

g. All maintenance payments, including difficulty of care payments, shall be documented on Form ~~SS-2605-0 470-0716~~, Foster Family Placement Contract.

Amend the implementation sentence as follows:

This rule is intended to implement Iowa Code section 234.38 and ~~2004 2005~~ Iowa Acts, House File ~~732~~ 825, section ~~34~~ 29, subsection 5.

ITEM 5. Strike the phrase “regional administrator” and insert in lieu thereof “service area manager” wherever the phrase appears in subrules **156.6(2)**, **156.8(3)**, **156.8(4)**, and **156.8(5)**, subparagraph **156.9(2)“a”(5)**, paragraph **156.9(2)“b,”** and subparagraphs **156.10(1)“a”(8)**, **156.10(1)“b”(7)**, **156.10(1)“c”(6)**, **156.10(2)“a”(7)**, **156.10(2)“b”(6)**, **156.10(2)“c”(6)**, **156.10(3)“a”(7)**, and **156.20(1)“b”(3)**.

ITEM 6. Strike the phrase “Form 07-350, Purchase Order/Payment Voucher” and insert in lieu thereof “Form GAX, General Accounting Expenditure” wherever the phrase appears in subrules **156.8(3)**, **156.8(4)**, and **156.8(5)**.

ITEM 7. Amend paragraph **156.8(8)“b,”** introductory paragraph, as follows:

b. Child care services when the foster parents are working, the child is not in school, and the provision of child care is identified in the child's case permanency plan. ~~A maximum of \$750,000 in state funds shall be allocated among the department regions based on the number of licensed foster families in each region on July 1. The allocation shall be reviewed yearly and adjusted to reflect a change in the number of licensed families. Requests for child care shall be denied when the region's funds are obligated or depleted.~~

ITEM 8. Strike the words “region” and “regional” and insert in lieu thereof “service area” wherever the words appear in rule **441—156.11(234)** and subparagraphs **156.20(1)“a”(2)** and **156.20(1)“b”(3)**.

ITEM 9. Further amend rule 441—156.11(234) as follows:

Amend subrule 156.11(3) as follows:

Amend the introductory paragraph as follows:

**156.11(3)** Shelter care payment. Public and private juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the rate-setting methodology in 441—~~paragraph~~ 150.3(5)“p”(1). ~~These facilities shall have the option of being paid a monthly sum which is calculated by multiplying the agency's unit cost by the utilization factor by the number of days in the month. The utilization factor~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

shall be the lesser of the following: (1) the actual department of human services average daily utilization for the last 12-month period, (2) the average daily number of beds in the agency's previous fiscal year fixed rate contract, or (3) the department of human services' projected average daily utilization of shelter care beds for the upcoming fiscal year. All units shall be based on a calendar year. Only units of service for which the department of human services is authorized to pay shall be considered in this rule. The utilization factor shall not exceed the licensed capacity of the facility.

Rescind paragraph "a" and adopt the following **new** paragraph in lieu thereof:

a. Facilities shall bill for actual units of service provided in accordance with 441—subrule 150.3(8). In addition, facilities may be guaranteed a minimum level of payment to the extent determined by the department through a request-for-proposal process.

(1) Guaranteed payment shall be calculated for six-month periods ending December 31 and June 30.

(2) The guaranteed level of payment shall be calculated by multiplying the number of beds for which payment is guaranteed times the number of days in the six-month period.

(3) When the billings for a facility do not equal or exceed the guaranteed level of payment for the six-month period, the facility may submit a supplemental billing for the deficiency.

(4) The amount of reimbursement shall be determined by multiplying the facility's unit cost for shelter care by the number of units below the guaranteed level for the six-month period for which the facility was not reimbursed.

ITEM 10. Amend rule 441—156.14(234,252C) as follows:

**441—156.14(234,252C) Voluntary placements.** When placement is made on a voluntary basis, the parent or guardian shall complete and sign Form *SS-2604 470-0715*, Voluntary Placement Agreement.

[Filed Emergency 6/17/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4312B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 234.6 and 235A.14(1) and 2003 Iowa Acts, chapter 178, section 4, the Department of Human Services amends Chapter 175, "Abuse of Children," Iowa Administrative Code.

These amendments conform child protective services rules to:

- The Department's redesign of the state child welfare system, "Better Results for Kids," by identifying new criteria for service eligibility after assessment and by making form changes to align documentation with practice. The criteria identify the most vulnerable children who are at the highest risk for abuse or reabuse and require that the families of those children be offered services by the Department. Families at lower risk of abuse are referred to a community care contractor.

- Amendments to Iowa Code chapter 235A made by 2005 Iowa Acts, Senate File 343, regarding access to child abuse information.

- Federal requirements for child protection services citizen review panels.

These amendments do not provide for waivers in specified situations because requirements for child abuse assessment and child abuse information are set by statute.

The Council on Human Services adopted these amendments June 15, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because these amendments implement 2003 Iowa Acts, chapter 178, section 4, which authorizes the Department to adopt rules without notice and public participation, and 2005 Iowa Acts, Senate File 343, which takes effect July 1, 2005.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2003 Iowa Acts, chapter 178, section 4.

These amendments are also published herein under Notice of Intended Action as **ARC 4327B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 232.67 to 232.77 and Iowa Code chapter 235A.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **441—175.21(232,235A)** by adopting the following **new** definition of "community care" in alphabetical order:

"Community care," as provided in rule 441—186.1(234), means child- and family-focused services and supports provided to families referred from the department. Services shall be geared toward keeping the children in the family safe from abuse and neglect; keeping the family intact; preventing the need for further intervention by the department, including removal of the child from the home; and building ongoing linkages to community-based resources that improve the safety, health, stability, and well-being of families served.

ITEM 2. Amend rule 441—175.22(232) as follows:

**441—175.22(232) Receipt of a report of child abuse.** Reports of child abuse shall be received by ~~county~~ local department offices, the central abuse registry, or the Child Abuse Hotline.

**175.22(1)** Any report made to the department which alleges child abuse as defined in Iowa Code section 232.68 shall be accepted for assessment.

**175.22(2)** Reports of child abuse which do not meet the legal definition of child abuse shall become rejected intakes. ~~Rejected intakes may be referred for services.~~

a. If a report does not meet the legal definition of child abuse, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

b. If a report constitutes an allegation of child sexual abuse as defined under Iowa Code section 232.68, paragraph "c" or "e," except that the suspected abuse resulted from the acts or omissions of a person who was not a caretaker, the de-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

partment shall refer the report to law enforcement orally and, as soon as practicable, follow up in writing within 72 hours of receiving the report.

ITEM 3. Amend rule **441—175.25(232)** as follows:

Renumber numbered paragraphs “1” through “7” as subrules **175.25(1)** through **175.25(7)**.

Amend renumbered subrule 175.25(2) as follows:

**175.25(2)** Interviewing the alleged child victim. *The primary purpose of an interview with the child is to gather information regarding the abuse allegation, the child's immediate safety, and risk of abuse.*

Rescind numbered paragraph “8.”

Adopt **new** subrule 175.25(8) as follows:

**175.25(8)** Service recommendations and referrals. During or at the conclusion of a child abuse assessment, the department may recommend information, information and referral, community care referral, or services provided by the department. If it is believed that treatment services are necessary for the protection of the abused child or other children in the home, juvenile court intervention shall be sought.

a. Information or information and referral. Families with children of any age that have confirmed or not confirmed abuse and low risk of abuse shall be provided either information or information and referral when:

(1) No service needs are identified, and the worker recommends no service; or

(2) Service needs are identified, and the worker recommends new or continuing services to the family to be provided through informal supports; or

(3) Service needs are identified, and the worker recommends new or continuing services to the family to be provided through community agencies.

b. Referral to community care. With the exception of families of children with an open department service case, court action pending, or abuse in an out-of-home setting, a referral to community care shall be offered to:

(1) Families with children whose abuse is not confirmed when there is moderate to high risk of abuse, service needs are identified, and the worker recommends community care.

(2) Families with children that have confirmed but not founded abuse and moderate or high risk of abuse when service needs are identified and the worker recommends community care.

(3) Families with children with founded abuse, a victim child six years of age or older, and a low risk of repeat abuse when service needs are identified and the worker recommends community care.

c. Referral for department services. Families with children that have founded abuse and moderate to high risk of abuse and families with victim children under age six that have founded abuse and low risk of abuse shall be offered department services on a voluntary basis.

(1) The worker shall recommend new or continuing treatment services to the family to be provided by the department, either directly or through contracted agencies.

(2) Families that refuse voluntary services shall be referred for a child in need of assistance action through juvenile court.

ITEM 4. Amend rule 441—175.26(232) as follows:

Amend subrule 175.26(1), introductory paragraph and paragraph “e,” as follows:

**175.26(1)** ~~Child Protective Assessment Summary—Part A, Form 470-3240 Report and disposition data. The Part A summary Form 470-3240, Child Protective Services Assessment Summary, shall include report and dispositional data information~~ as follows:

e. Recommendation for treatment services: *as specified in 175.25(8) and a statement describing whether treatment services are necessary to ensure the safety of the child or to prevent or remedy other identified problems.*

(1) The statement shall include the type of treatment services recommended, if any, and whether these treatment services are to be provided by the department, community agencies, informal supports, or another treatment source.

(2) If treatment services are already being provided, the statement shall include a recommendation whether these treatment services should continue.

Rescind subrule 175.26(2) and adopt the following **new** subrule in lieu thereof:

**175.26(2)** Assessment data. Form 470-4133, Family Risk Assessment, and Form 470-4132, Safety Assessment/Plan, may be used as part of the child's case permanency plan for cases in which the department will provide treatment services.

ITEM 5. Amend rule 441—175.27(232) as follows:

**441—175.27(232) Contact with juvenile court or the county attorney.** The child protection worker may orally contact juvenile court or the county attorney, or both, as circumstances warrant.

**175.27(1) Report of intake.** When a report of child abuse is accepted or rejected for assessment, the county attorney shall be provided Form 470-0607, Child Protective Service Intake, with information about the allegation of child abuse and with identifying information about the subjects of the report.

**175.27(2) Report of disposition.** The child protection worker shall provide the juvenile court and the county attorney with a copy of Form 470-3240, Child Protective Services Assessment Summary—~~Part A~~, which pertains to the findings, determinations, and recommendations regarding the report of child abuse.

**175.27(3) Report of assessment.** The child protection worker shall provide the county attorney and the juvenile court with a copy of Form 470-3241 ~~470-4133, Child Protective Family Risk Assessment Summary—Part B, and Form 470-4134, Safety Assessment/Plan, which pertains to the evaluation of the child and family's strengths and needs and the development of a suggested plan of action~~ when any of the following occur:

**175.27(1) a.** County attorney's or juvenile court's assistance necessary. The worker requires the court's or the county attorney's assistance to complete the assessment process.

**175.27(2) b.** Court's protection needed. The worker believes that the child requires the court's protection.

**175.27(3) c.** Child adjudicated. The child is currently adjudicated or pending adjudication under a child in need of assistance petition or a delinquency petition.

**175.27(4) d.** County attorney or juvenile court requests copy. The county attorney or juvenile court requests a copy of Form 470-3241, ~~Child Protective Assessment Summary—Part B~~ the assessment data. The child protection worker shall document when the ~~Child Protective Assessment Summary—Part B~~ assessment data is provided to the county attorney or juvenile court and the rationale provided for the request.

ITEM 6. Amend rule 441—175.32(232) as follows:

**441—175.32(232,235A) Case records.** The assessment case record shall contain the child protective assessment summary as described in 441—175.26(232) and any related cor-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

respondence or information which pertains to the assessment or to the child and family. The name of the person who made the report of child abuse shall not be disclosed to the subjects of the report. The child protective assessment summary shall have two parts.

1. ~~Part A, Form 470-3240, is report~~ Report and disposition data as described in 175.26(1). ~~Part A shall contain information which pertains to the report of child abuse, and a description of the child's condition, identification of the injury or risk to which the child was exposed and the identity of any person alleged to be responsible for the injury or risk to the child. Subjects of the report have access to that information which is contained within Part A of the child protective assessment summary report and disposition data, including, where applicable, confirmation of placement on the central abuse registry for abuse reports meeting the criteria pursuant to Iowa Code Supplement subsection 232.71D(3). Part A of the report shall be sent to the juvenile court having jurisdiction over the child and to the county attorney. Part A Form 470-3240, Child Protective Services Assessment Summary, shall only be submitted to the central abuse registry only if the abuse is confirmed and determined to meet the criteria pursuant to Iowa Code Supplement subsection 232.71D(3).~~

2. ~~Part B, Form 470-3241, is assessment~~ Assessment data as described in 175.26(2). ~~Part B shall contain information which identifies the strengths and needs of the child, of the child's parent, home, family and community and, where appropriate, a suggested plan of action which is developed in conjunction with the family. Part B Assessment data shall be available to those family members who participated in the assessment of child and family function, strengths, needs, and the development of a suggested plan of action to meet identified needs, if applicable subjects. Release of any information contained within Part B assessment data shall be accomplished only when the parent or guardian approves the release as provided through Iowa Code chapter 217, except for founded reports which are governed under or as specified in Iowa Code section 235A.15. Part B is assessment~~ Assessment data and shall not be submitted to the central abuse registry.

**175.32(1)** Assessments where abuse was confirmed but not placed on the central abuse registry. *The following conditions apply to case records for assessments in which abuse was confirmed but not placed on the central registry:*

a. Access to the report data and disposition data of an assessment not placed on the central abuse registry is authorized only to the subjects of the report, the child protection worker, law enforcement officer responsible for assisting in the assessment or for the temporary emergency removal of a child from the child's home, the multidisciplinary team if assisting the department in the assessment of the abuse, county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department or contract personnel necessary for official duties, the department of justice, and the attorney for the department.

b. The child abuse protective assessment summary is retained five years from date of intake or five years from the date of closure of the service record, whichever occurs later.

c. The child abuse protective assessment summary is subject to confidentiality provisions of Iowa Code chapter 217 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code Supplement section 235A.15.

**175.32(2)** Assessments not placed on the central abuse registry where abuse was not confirmed. *The following con-*

*ditions apply to case records for assessments in which abuse was not confirmed and not placed on the central registry:*

a. Access to the report data on a child abuse assessment summary where abuse was not determined to have occurred and, therefore, the assessment was not placed on the central abuse registry is authorized only to the subjects of the assessment, the child protection worker, county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department of justice and department or contract personnel necessary for official duties.

b. Records are retained five years from date of intake or five years from the date of closure of the service record, whichever occurs later.

c. The child abuse protective assessment summary is subject to confidentiality provisions of Iowa Code chapter 217 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code Supplement section 235A.15.

ITEM 7. Amend subrule 175.43(4) as follows:

**175.43(4)** Functions. Each panel established pursuant to this rule shall:

a. evaluate Evaluate the extent to which the department effectively discharges the child protection responsibilities in accordance with: the state plan and the child protection standards under subsection (b) of the Child Abuse Prevention and Treatment Act of 1996; the child protection duties of the department set forth in Iowa Code chapters 232 and 235A; and any other criteria that the panel considers important to ensure the protection of children, including a:

(1) A review of the extent to which the child protective services system is coordinated with the foster care and adoption programs established under Part E of Title IV of the Social Security Act (42 USCS 670 et seq.); and a

(2) A review of child fatalities and near fatalities.

b. Provide for public outreach and comment in order to:

(1) Assess the impact of current procedures and practices upon children and families in the community; and

(2) Make recommendations to the state and the public on improving the child protective services system at the state and local levels.

[Filed Emergency 6/17/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4311B**

## HUMAN SERVICES DEPARTMENT[441]

### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 235B.6, the Department of Human Services amends Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

This amendment adds a court or administrative agency making a determination regarding an unemployment compensation claim for a person who is the subject of a dependent adult abuse report to the list of entities with access to dependent adult abuse information, as directed by 2005 Iowa Acts, Senate File 335. The need for access for this group oc-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

curs when the person seeking unemployment compensation was fired because of a founded adult abuse report.

This amendment does not provide for waivers in specified situations because access to dependent adult abuse information is set by statute, which the Department has no authority to waive.

The Council on Human Services adopted this amendment June 15, 2005.

The Department finds that notice and public participation are unnecessary because the Department has no discretion in making the rule. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit on the public by making the Department's rule congruent with the statute. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 4326B** to allow for public comment.

This amendment is intended to implement Iowa Code section 235B.6 as amended by 2005 Iowa Acts, Senate File 335.

This amendment became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend subrule **176.10(3)**, paragraph "**d**," by adopting **new** subparagraph **(5)** as follows:

(5) A court or administrative agency making a determination regarding an unemployment compensation claim for a person who is a subject of a dependent adult abuse report.

[Filed Emergency 6/17/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4310B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 2005 Iowa Acts, House File 825, section 29, the Department of Human Services amends Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments implement a 3 percent cost-of-living adjustment to reimbursement rates negotiated for rehabilitative treatment and supportive services, including family preservation, family-centered services, and foster care services. Most of the increases will be applied to a provider's negotiated rates as in effect on June 30, 2005. For family-centered relative home studies and community resource procurement services, the fixed fee stated in the rules is increased by 3 percent.

These amendments do not provide for waivers in specified situations because they benefit the affected providers.

The Council on Human Services adopted these amendments on June 15, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because these amendments implement 2005 Iowa Acts, House File 825, section 29, which authorizes the Department to adopt rules without notice and public participation.

The Department finds that these amendments confer a benefit. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments should be waived.

These amendments are also published herein under Notice of Intended Action as **ARC 4325B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 234.6 and 234.35.

These amendments became effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend paragraph **185.112(1)"k"** as follows:

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the service area manager of the host area based upon the factors delineated at paragraph 185.112(1)"f," except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, ~~2005~~ 2006.

(2) In accordance with paragraph 185.112(6)"b," except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, ~~2005~~ 2006.

(3) Rates may be changed when funds are appropriated for an across-the-board increase. *A 3 percent cost-of-living adjustment will be applied effective July 1, 2005.*

ITEM 2. Amend paragraph **185.112(14)"c"**, subparagraphs **(1)** and **(2)**, as follows:

(1) The rate for a new home study as described in 441—subrules 182.2(6) and 182.8(1) is ~~\$700~~ \$721 per unit of service.

(2) The rate for an update of an existing home study as described in 441—subrules 182.2(6) and 182.8(1) is ~~\$260~~ \$267.80 per unit of service.

ITEM 3. Amend paragraph **185.112(14)"d"** as follows:

d. Community resource procurement. The rate for community resource procurement services as described in 441—subrules 182.2(7) and 182.8(1) is ~~\$10~~ \$10.30 per unit of service.

[Filed Emergency 6/17/05, effective 7/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4340B****NATURAL RESOURCE  
COMMISSION[571]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby adopts an amendment to Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment establishes a no-wake zone on the Cedar River in Chickasaw County at Nashua for the purpose of designating a swimming beach by the City of Nashua.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because of the immediate need for change in the rule to allow the public access to the proposed swimming area during this swimming season. This change has been submitted to the Department by petition from the City of Nashua, with local notice and comment period already held.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on June 17, 2005, as it confers a benefit to the public by allowing a swimming area in the designated no-wake zone.

This amendment is intended to implement Iowa Code section 462A.26.

This amendment became effective June 17, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Re-number subrule **40.45(2)** as **40.45(3)** and adopt the following **new** subrule 40.45(2):

**40.45(2)** Nashua, Chickasaw County. All vessels operated in a designated zone extending north 131 feet from the intersection of Wabash Street and the north entrance to Cedar View Circle and east 80 feet and west 80 feet from this point along the shoreline and extending 110 feet north into the lake shall be operated at no-wake speed. The city of Nashua shall designate and maintain the no-wake zone with marker buoys approved by the natural resource commission.

[Filed Emergency 6/17/05, effective 6/17/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4288B****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 15, 2005, adopted amendments to Chapter 605, "License Is-

suance," and Chapter 607, "Commercial Driver Licensing," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the May 11, 2005, Iowa Administrative Bulletin as **ARC 4130B**. These amendments are identical to those published under Notice of Intended Action.

**School bus endorsement.** These amendments adopt a new school bus endorsement for commercial driver's licenses. After September 30, 2005, all persons operating commercial motor vehicles meeting the definition of "school bus" are required to have a school bus endorsement added to their commercial driver's licenses. A school bus is a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. A school bus does not include a bus used as a common carrier.

An applicant for a school bus endorsement must qualify for a passenger vehicle endorsement and pass both a knowledge test and a skills test for the school bus endorsement. However, up to and including September 30, 2005, the skills test is waived for applicants who meet the requirements of 49 CFR Section 383.123(b). Basically, this waiver applies to individuals who possess a commercial driver's license with a passenger vehicle endorsement, have recently been employed as school bus drivers, and have good driving records.

The fee for a school bus endorsement is \$10, as specified in 2005 Iowa Acts, House File 216, section 16.

**Hazardous material endorsement.** These amendments adopt new federal requirements for persons applying for or renewing hazardous material endorsements. The Transportation Security Administration must determine that the applicant does not pose a security threat before the endorsement can be issued. The applicant must also provide proof of citizenship or immigration status. Iowa Code section 321.188 requires applicants for hazardous material endorsements to comply with the federal security threat assessment requirements.

Federal regulations for security threat assessments provide for appeals and waivers. Appeals and waivers are decided by the Transportation Security Administration.

**Other amendments.** Item 3 adds an optional form that persons with military extensions may use to request retention of their driver's license records. Other amendments correct the rules to reflect the provisions of the current Iowa Code or the provisions of 2005 Iowa Acts, House File 216. Notable statutory changes include the following:

- Pursuant to Iowa Code section 321.198 as amended by 2005 Iowa Acts, House File 216, section 19, a military extension is no longer limited to noncommercial Class C or Class M licenses.

- 2005 Iowa Acts, House File 216, sections 22 to 25, updates the list of acts or offenses that disqualify a person from operating a commercial motor vehicle.

The Department finds that the amendments regarding the school bus endorsement confer a benefit on both passengers in school buses and the motoring public by providing more specific knowledge and skills testing of individuals before they are commercially licensed to operate school buses.

The Department finds that the amendments confer a benefit on individuals who meet the requirements of 49 CFR Section 383.123(b) by waiving, up to and including September 30, 2005, the skills test requirement for a school bus endorsement.

The Department finds that the amendments regarding the security threat assessment for a hazardous material endorsement confer a benefit on the public by updating the rules to reflect the requirements for security threat assessments. Se-

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curity threat assessments confer a benefit on the public by reducing the risk that persons who pose a security threat will gain access to hazardous material and use a commercial motor vehicle hauling hazardous material in the commission of a terrorist act.

The Department finds that other amendments in this filing confer a benefit on the public by updating the rules to reflect current statutes and by providing an optional form that persons with military extensions may use to request retention of their driver's license records.

Based on these findings, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

These amendments are intended to implement Iowa Code chapter 321 and 2005 Iowa Acts, House File 216.

These amendments became effective July 1, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 605, 607] is being omitted. These amendments are identical to those published under Notice as **ARC 4130B**, IAB 5/11/05.

[Filed Emergency After Notice 6/15/05, effective 7/1/05]  
[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

**ARC 4289B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 111, "Disposal of State Personal Property," Iowa Administrative Code.

New rule 11—111.2(8A) establishes procedures for inspecting, selecting, and removing personal property under the control of the Director from state agencies or from state storage. Comments received on this topic when the rules were proposed in 2004 addressed the need for a cost-effective, fair, ethical, and open process for disposal of surplus state personal property, and especially the need for a process that would take into account the unique issues regarding disposal of personal property located outside of the Des Moines area. Other comments concerned how the difference between surplus property and scrap is determined and whether all the proceeds from the sale of surplus property must go to the general fund of the state if there are contrary directives such as a condition required by the source of the procurement funding or charter agency agreements.

These amendments have taken into account those comments, along with input from the Attorney General's office, the Auditor's office, the Ethics and Campaign Disclosure Board office, Iowa Prison Industries and the Administrative Rules Review Committee.

The Department presently has a surplus property program agent agreement with Iowa Prison Industries.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 27, 2005, as **ARC 4124B**.

A public hearing was held on May 17, 2005. One member of the public attended the hearing, and comment was received from one source outside the hearing. The commenter at the public hearing, a surplus property customer, advocated for the provision of preferential pricing and access for government entities prior to public sale of state surplus property in a manner similar to the preferences provided for the sale of federal surplus property. This comment was forwarded to the current state surplus property program agent and was considered, but no changes were made in this rule making to address this comment. The surplus property program agent suggested that the head of each state agency should ultimately be responsible for the designation of unused items as state surplus or scrap in their work areas rather than requiring the Department of Administrative Services' Director to designate specific individuals in other agencies to take on that responsibility.

Two minor changes were made to the amendments published under Notice of Intended Action. In subrule 111.2(6), the word "director" was changed to "head of a state agency" to allow the heads of other state agencies to take responsibility for identifying surplus property within their work areas. Subrule 111.2(6) now reads as follows:

**"111.2(6)** Identifying items for disposal. State agency staff designated by the head of a state agency or designated department staff may identify unused property within state office areas and determine whether the unused property is scrap or salvageable surplus property."

In addition, a correction was made to the final implementation clause for Chapter 111. The implementation clause now reads as follows:

"These rules are intended to implement Iowa Code sections 8A.321(5), 8A.324, 8A.362(6) and 8A.365."

These amendments were adopted by the Department on June 10, 2005.

These amendments shall become effective on August 10, 2005.

These amendments are intended to implement Iowa Code sections 8A.321(5) and 8A.324.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [111.1, 111.2, Ch 111 impl.] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4124B**, IAB 4/27/05.

[Filed 6/15/05, effective 8/10/05]  
[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

**ARC 4324B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 235B.5(1), the Department of Human Services amends Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These amendments:

- Eliminate the requirement for completion of a "preliminary" report of a dependent adult abuse evaluation.
- Extend the time limit for completion of an evaluation report from 10 working days to 20 working days after the receipt of the allegation.
- Specify that the Central Abuse Registry may grant an extension of the time limit for no more than 30 working days upon showing of good cause.
- Limit the Registry to granting three extensions.

These amendments eliminate unproductive paperwork and give Department protective service staff a more reasonable time limit for completing abuse evaluations. More than ten working days are often needed to contact and receive responses from other professionals, such as physicians or counselors. Consequently, the preliminary reports are of little value and requests for an extension of the time limit are frequently required. The current rules do not limit the length or number of extensions, so an extension effectively removes any time limit for completion of the report. Dependent adults, the staff, and the public will all benefit from more workable and specific time limits.

These amendments do not provide for waivers in specified situations because these changes benefit the persons affected.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on April 13, 2005, as **ARC 4108B**. The Department received no comments on the Notice of Intended Action.

The Department has added two technical changes to these amendments, to replace the terms "regional office" and "regional administrator" with the terms "service area" and "service area manager" in subrules 176.15(1) and 176.15(2), in

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conformity with the Department's current organizational structure.

The Council on Human Services adopted these amendments on June 15, 2005.

These amendments are intended to implement Iowa Code sections 235B.3 and 235B.5.

These amendments shall become effective on September 1, 2005.

The following amendments are adopted.

ITEM 1. Amend subrule 176.6(5), introductory paragraph, as follows:

**176.6(5)** The department, upon completion of its evaluation, shall transmit a copy of its preliminary report, including actions taken or contemplated, to the registry within ~~four regular working days after the department receives the adult abuse report, unless the registry grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within ten~~ 20 working days of the receipt of the abuse report, unless the registry grants an extension of time for good cause shown. *The registry may grant an extension for a maximum of 30 working days. No more than three extensions shall be granted.*

ITEM 2. Amend rule 441—176.7(235B) as follows:

**441—176.7(235B) Appropriate evaluation or assessment.**

**176.7(1)** After receipt of the report alleging dependent adult abuse, the field worker shall make a ~~preliminary~~ *an* evaluation or assessment to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources would tend to corroborate the alleged abuse.

**176.7(2)** When the information gathered in the ~~preliminary~~ *preliminary* evaluation or assessment tends to corroborate, or the worker is uncertain as to whether it repudiates the allegations of the report, the worker shall immediately continue the evaluation or assessment by making a reasonable effort to ensure the safety of the adult. The worker and the worker's supervisor shall determine whether an immediate threat to the physical safety of the adult is believed to exist.

*a.* If an immediate threat to the physical safety of the adult is believed to exist, the field worker shall make every reasonable effort to examine the adult, as authorized by 176.6(3), within one hour after receipt of the report and shall take any lawful action necessary or advisable for the protection of the adult.

*b.* When physical safety of the adult is not endangered, the worker shall make every reasonable effort to examine the adult within 24 hours after receipt of the report.

**176.7(3)** In the event the information gathered in the ~~preliminary~~ *preliminary* evaluation or assessment fails to corroborate the allegation of adult abuse, the worker, with approval of the supervisor, may terminate the evaluation or assessment and submit the ~~"four-day report"~~ required by subrule 176.6(5).

ITEM 3. Amend rule 441—176.15(235B) as follows:

Amend subrule 176.15(1) as follows:

**176.15(1)** Purpose of multidisciplinary teams. The ~~regional office service area~~ shall establish multidisciplinary teams for the purpose of assisting the department in assessment, diagnosis, and disposition of reported dependent adult abuse cases. The disposition of a case may include the provision for treatment recommendations and services.

Amend subrule 176.15(2), introductory paragraph, as follows:

**176.15(2)** Execution of team agreement. When the team is established, the ~~regional administrator~~ *service area manager* or designee and all team members shall execute an agreement on Form 470-2328, Dependent Adult Abuse Multidisciplinary Team Agreement. This agreement specifies:

ITEM 4. Amend **441—Chapter 176**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 235B as amended by 2003 Iowa Acts, Senate File 416 and House File 558.

[Filed 6/17/05, effective 9/1/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4308B**

## **MEDICAL EXAMINERS BOARD[653]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3 and chapter 148, the Board of Medical Examiners hereby amends Chapter 9, "Permanent Physician Licensure," and Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

These amendments update and clarify licensure procedures for permanent, resident, special and temporary licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 11, 2005, as **ARC 4132B**. The Board made a change in paragraph 9.12(1)"c" that limits a physician from practicing in any jurisdiction under an Iowa license when the physician's Iowa license is inactive rather than excluding the physician from practicing just in Iowa when the physician's Iowa license is inactive. Paragraph 9.12(1)"c" reads as follows:

"c. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated to current, active status. A licensee who practices under an Iowa license when the license is inactive may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, or other available legal remedies."

The Board did not clarify subrule 9.15(1), as requested by the Iowa Medical Society, because the Board is unable to do so until a decision comes down from the Iowa Supreme Court on whether a preliminary denial of a license is public record. The Board will clarify the subrule when the decision is received.

The Board adopted the amendments to Chapters 9 and 10 during a telephone conference call held on June 15, 2005.

These amendments are intended to implement Iowa Code sections 148.3, 148.5, 148.9, 148.10 and 148.11.

These amendments will become effective on August 10, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 9, 10] is being

MEDICAL EXAMINERS BOARD[653](cont'd)

omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 4132B**, IAB 5/11/05.

[Filed 6/17/05, effective 8/10/05]  
[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

## ARC 4339B

### NATURAL RESOURCE COMMISSION[571]

#### Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

The amendments add a new antlerless-deer-only season in November; extend the January antlerless-deer-only season and allow centerfire rifles during a portion of this season in southern Iowa; increase license quotas for antlerless-deer-only licenses; close roadways from deer hunting north of U.S. Highway 30; clarify penalties for providing false information when obtaining a deer license; and change eligibility requirements and the number of free deer licenses for landowners and tenants to conform to changes made by the General Assembly.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 30, 2005, as **ARC 4088B**. A public hearing was held on April 19, 2005. Comments on deer hunting were received at the public hearing. There were several changes from the Notice of Intended Action. These changes include an increase in the number of antlerless-deer-only licenses, more free licenses for landowners and tenants, the addition of a new season in November, and allowing the use of centerfire rifles in southern Iowa. These changes were implemented because hunting statistics during the traditional deer seasons show that not enough deer are being taken in the southern part of the state and that herds are continuing to grow.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective August 10, 2005.

The following amendments are adopted.

ITEM 1. Rescind rule 571—106.1(481A) and adopt the following **new** rule in lieu thereof:

**571—106.1(481A) Licenses.** When hunting deer, all hunters must have in their possession a valid deer hunting license and a valid resident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No person while hunting deer shall carry or have in possession any license or transportation tag issued to another person.

**106.1(1) Type of license.**

a. Any-deer licenses. Any-deer licenses shall be valid for taking deer of either sex. Paid any-deer licenses shall be valid statewide or in a deer population management zone and in one season as designated on the license. Free any-deer licenses shall be valid only on the farm unit of an eligible land-

owner or tenant in the season or seasons designated on the license.

b. Antlerless-deer-only licenses. Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler. Paid antlerless-deer-only licenses shall be valid in one county or in one deer population management zone and in one season as designated on the license. Free antlerless-deer-only licenses shall be valid on the farm unit of an eligible landowner or tenant in the season or seasons designated on the license.

**106.1(2) Bow season licenses.** Any-deer and antlerless-deer-only licenses, paid or free, shall be valid in both segments of the bow season.

**106.1(3) Regular gun season licenses.** Paid any-deer and antlerless-deer-only licenses shall be valid in either the first or the second regular gun season, as designated on the license. Free any-deer licenses and antlerless-deer-only licenses shall be valid in both the first and second regular gun seasons.

**106.1(4) Muzzleloader season licenses.** Any-deer and antlerless-deer-only licenses, paid or free, shall be valid in either the early or the late muzzleloader season, as designated on the license.

**106.1(5) November antlerless-deer-only licenses.** Only antlerless-deer-only licenses, paid or free, will be issued for the November antlerless-deer-only season.

**106.1(6) January antlerless-deer-only licenses.** Only antlerless-deer-only licenses, paid or free, will be issued for the January antlerless-deer-only season.

**106.1(7) Free and reduced-fee deer licenses for landowners and tenants.** One free any-deer license may be issued to a qualifying landowner or tenant or eligible family member. Eligibility for licenses is described in 571—106.12(481A). The free any-deer license shall be available for the youth/disabled hunter season, bow season, early or late muzzleloader season or first or second regular gun season. Persons who obtain a free any-deer license may also obtain one free antlerless-deer-only license and two reduced-fee antlerless-deer-only licenses. The free antlerless-deer-only license shall be valid for the youth/disabled hunter season, bow season, early or late muzzleloader season, first or second regular gun season, or November antlerless-deer-only season. One additional free antlerless-deer-only license valid only for the January antlerless-deer-only season may be obtained if a portion of the farm unit is located in a county that is open during that season. The reduced-fee antlerless-deer-only licenses shall be valid for the youth/disabled hunter season, bow season, early or late muzzleloader season, first or second regular gun season, or November antlerless-deer-only season.

ITEM 2. Amend rule 571—106.2(481A) as follows:

**571—106.2(481A) Season dates.** Deer may be taken only during the following seasons:

**106.2(1) Bow season.** Deer may be taken ~~by bow and arrow~~ in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year, ~~except that special regulations may apply in deer population management areas (571—Chapter 105).~~

**106.2(2) Regular gun seasons.** Deer may be taken ~~by gun only~~ in accordance with the type, season and zone designated on the license from the first Saturday in December and continuing for five consecutive days (first regular gun season) or from the second Saturday in December and continuing for nine consecutive days (second regular gun season).

NATURAL RESOURCE COMMISSION[571](cont'd)

**106.2(3)** Muzzleloader seasons. Deer may be taken by muzzleloader in accordance with the type, season and zone designated on the license from the Saturday closest to October 14 and continuing for nine consecutive days (early muzzleloader season) or from the Monday following the third Saturday in December through January 10 of the following year (late muzzleloader season).

**106.2(4)** *November antlerless-deer-only season. Antlerless deer may be taken for three days beginning the Friday after Thanksgiving.*

~~**106.2(4-5)** *Special late January antlerless-deer-only season. Antlerless deer may be taken by shotgun, muzzleloading rifle, muzzleloading pistol, handgun or bow as permitted in 571—106.7(481A) from January 11 through January 23 the second following Sunday. The season will be extended seven additional days in the southern two tiers of counties. All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for taking deer with a firearm shall apply.*~~

ITEM 3. Adopt **new** subrule 106.4(4) and amend existing subrules 106.4(4) and 106.4(5) as follows:

**106.4(4)** *November antlerless-deer-only season. The bag and possession limits and the tagging requirements are the same as for the regular gun seasons.*

~~**106.4(4-5)** *Special late January antlerless-deer-only season. The daily bag and possession limit is one deer per license, and the tagging requirements are the same as for the regular gun seasons.*~~

~~**106.4(5-6)** *Maximum annual possession limit. The maximum annual possession limit for a resident deer hunter is one deer for each legal license and transportation tag obtained.*~~

ITEM 4. Amend rule 571—106.5(481A) as follows:

**571—106.5(481A) Areas open closed to hunting.**

~~**106.5(1)** *Paid deer licenses. Hunters shall be restricted to the type of deer they shoot based on the season, dates, county or zone in which they hunt.*~~

~~a. *Bow season. Any deer may be taken in all counties.*~~

~~b. *Muzzleloader seasons. Any deer may be taken in all counties.*~~

~~c. *Regular gun seasons. Any deer may be taken in all counties.*~~

~~**106.5(2)** *Paid antlerless deer licenses.*~~

~~a. *Paid antlerless-only deer licenses shall be valid only for antlerless deer and only in the season and county designated on the license. Paid antlerless-only deer licenses shall be available in all Iowa counties. An antlerless deer is defined as a deer without a visible antler or with no antler longer than 7 inches.*~~

~~b. *Paid antlerless-only deer licenses for the special late season shall be valid only for antlerless deer and only in the season and county designated on the license. Paid antlerless-only deer licenses for the special late season shall be available in all counties. An antlerless deer is defined as a deer without a visible antler or with no antler longer than 7 inches.*~~

~~**106.5(3)** *Free landowner/tenant licenses. Free landowner/tenant licenses shall be valid for hunting any deer. Free regular gun season licenses shall be valid for both the first and second regular gun seasons.*~~

**106.5(4)** *Closed areas. There shall be no open seasons for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.*

ITEM 5. Rescind rule 571—106.6(481A) and adopt the following **new** rule in lieu thereof:

**571—106.6(481A) Paid deer license quotas and restrictions.** Paid deer licenses, including antlerless-deer-only licenses, will be restricted in the type and number that may be purchased.

**106.6(1)** Paid any-deer licenses. Residents may purchase no more than two paid any-deer licenses, one for the bow season and one for either the youth/disabled hunter, early or late muzzleloader, or first or second regular gun season. No more than 7,500 paid statewide any-deer licenses will be sold for the early muzzleloader season. Fifty additional paid early muzzleloader season licenses will be sold through and will be valid only for the Iowa Army Ammunition Plant. There will be no quota on the number of paid any-deer licenses issued in the youth/disabled hunter, bow, late muzzleloader or first or second regular gun season.

**106.6(2)** Paid antlerless-deer-only licenses. Paid antlerless-deer-only licenses have quotas for each county and will be sold for each county until quotas are reached. The season that may be hunted with paid antlerless-deer-only licenses and the number that may be purchased depend on the season for which any-deer licenses have been purchased.

a. Bow season. A person who purchases a paid any-deer bow license may purchase antlerless-deer-only licenses, but the type and number that may be purchased depend on the season for which the paid any-deer firearm license is purchased (see paragraphs "b" through "f"). Prior to October 1, if no paid any-deer firearm license is purchased, up to three paid antlerless-deer-only licenses may be purchased for the bow, first or second regular gun, or late muzzleloader season and up to three licenses may be purchased for the January antlerless-deer-only season. Beginning October 1, an unlimited number of antlerless-deer-only licenses may be purchased for these seasons. No person may obtain paid licenses of any type for both regular gun seasons.

b. First regular gun season. Prior to October 1, a person who purchases a paid any-deer license for the first regular gun season may purchase the following paid antlerless-deer-only licenses: up to three licenses for the bow, first regular gun and late muzzleloader seasons and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons. No person obtaining a paid license for the first regular gun season may obtain a paid license of any type for the second regular gun season.

c. Second regular gun season. Prior to October 1, a person who purchases a paid any-deer license for the second regular gun season may purchase the following paid antlerless-deer-only licenses: up to three licenses for the bow, second regular gun or late muzzleloader season and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons. No person obtaining a paid license for the second regular gun season may obtain a paid license of any type for the first regular gun season.

d. Early muzzleloader season. Prior to October 1, a person who purchases an any-deer license for the early muzzleloader season may purchase the following paid antlerless-deer-only licenses: up to three licenses for the bow or early muzzleloader season and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons.

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e. Late muzzleloader season. Prior to October 1, a person who purchases a paid any-deer late muzzleloader season license may purchase the following paid antlerless-deer-only licenses: up to three licenses for the bow, first regular gun or second regular gun, or late muzzleloader season and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of licenses may be purchased for these seasons. No person may obtain paid licenses of any type for both regular gun seasons.

f. Paid any-deer license not purchased. Prior to October 1, a person who does not purchase a paid any-deer license for any season may purchase the following antlerless-deer-only licenses: up to three licenses for the bow, first regular gun or second regular gun, or late muzzleloader season and up to three licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of these licenses may be purchased. No person may obtain paid licenses of any type for both regular gun seasons.

**106.6(3)** November antlerless-deer-only season. Beginning the second Saturday prior to the opening of the November antlerless-deer-only season, an unlimited number of paid antlerless-deer-only licenses may be purchased for the November antlerless-deer-only season. These licenses may be obtained regardless of any other paid any-deer or paid antlerless-deer-only licenses that may have been obtained. Licenses will be sold until county quotas are filled.

**106.6(4)** January antlerless-deer-only licenses. Antlerless-deer-only licenses for the January antlerless-deer-only season shall be available in all counties. Prior to October 1, a person may purchase up to three antlerless-deer-only licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of licenses may be obtained until quotas are filled. January antlerless-deer-only licenses may be obtained regardless of any other deer licenses that may have been obtained.

**106.6(5)** Free landowner/tenant licenses. A person obtaining a free landowner/tenant license may purchase any combination of paid bow and gun licenses available to persons who are not eligible for landowner/tenant licenses as described in 571—106.12(481A).

**106.6(6)** Antlerless-deer-only licenses. Paid antlerless-deer-only licenses will be available to eligible persons by county as follows:

<u>County</u>	<u>Quota</u>	<u>County</u>	<u>Quota</u>	<u>County</u>	<u>Quota</u>
Adair	1500	Floyd	500	Monona	650
Adams	1650	Franklin	350	Monroe	2500
Allamakee	3000	Fremont	850	Montgomery	800
Appanoose	3000	Greene	250	Muscatine	1500
Audubon	200	Grundy	100	O'Brien	100
Benton	1000	Guthrie	2500	Osceola	100
Black Hawk	150	Hamilton	200	Page	1100
Boone	500	Hancock	100	Palo Alto	100
Bremer	500	Hardin	500	Plymouth	150
Buchanan	500	Harrison	700	Pocahontas	100
Buena Vista	100	Henry	1900	Polk	750
Butler	1000	Howard	1200	Pottawattamie	1100
Calhoun	100	Humboldt	100	Poweshiek	750
Carroll	150	Ida	100	Ringgold	2250
Cass	600	Iowa	1200	Sac	100
Cedar	1000	Jackson	1600	Scott	1100
Cerro Gordo	150	Jasper	950	Shelby	200
Cherokee	100	Jefferson	1800	Sioux	150
Chickasaw	1500	Johnson	1900	Story	400
Clarke	1250	Jones	1400	Tama	800
Clay	100	Keokuk	1500	Taylor	2100
Clayton	3500	Kossuth	300	Union	1500
Clinton	1200	Lee	2500	Van Buren	3500
Crawford	150	Linn	1700	Wapello	2000
Dallas	1500	Louisa	1500	Warren	1150
Davis	3000	Lucas	1050	Washington	1900
Decatur	2500	Lyon	100	Wayne	2500
Delaware	1200	Madison	1500	Webster	250
Des Moines	2000	Mahaska	1100	Winnebago	100
Dickinson	100	Marion	1200	Winneshiek	2500
Dubuque	2000	Marshall	500	Woodbury	750
Emmet	100	Mills	850	Worth	250
Fayette	2000	Mitchell	400	Wright	100

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 6. Rescind rule 571—106.7(481A) and adopt the following **new** rule in lieu thereof:

**571—106.7(481A) Method of take.** Permitted weapons and devices vary according to the type of season.

**106.7(1) Bow season.** Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.5(481A), only longbow, compound or recurve bows shooting broadhead arrows are permitted. No explosive or chemical devices may be attached to the arrow or broadhead. Arrows must be at least 18 inches long.

**106.7(2) Regular gun seasons.** Only 10-, 12-, 16- and 20-gauge shotguns shooting single slugs and muzzleloaders and handguns as described in 106.7(3) will be permitted for taking deer during the regular gun seasons.

**106.7(3) Muzzleloader seasons.** Only muzzleloading rifles and muzzleloading pistols will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloader, handgun, or bow as described in 106.7(1). Muzzleloading rifles are defined as flintlock or percussion cap lock muzzle-loaded rifles and muskets of not less than .44 and not larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 caliber or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in Iowa Code section 481A.48. Legal handgun calibers are listed on the department of natural resources list of "acceptable handgun calibers for hunting deer in Iowa." Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Muzzle-loading handguns must be .44 caliber or larger, shooting single projectiles only.

**106.7(4) November antlerless-deer-only seasons.** Bows, shotguns, muzzleloaders and handguns as described in this rule may be used.

**106.7(5) January antlerless-deer-only season.** Bows, shotguns, muzzleloaders and handguns as described in this rule may be used during the January antlerless-deer-only season. Centerfire rifles .24 caliber or larger and with a capacity of no more than six rounds in the chamber and magazine combined may also be used during the extended portion of the January antlerless-deer-only season that is open only in the southern two tiers of counties.

**106.7(6) Prohibited weapons and devices.** The use of dogs, domestic animals, bait, rifles other than muzzleloaded or as provided in 106.7(5), handguns except as provided in 106.7(3), crossbows except as provided in 571—15.5(481A), automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle except as provided in 106.7(3) and 106.7(5). It shall be unlawful for a person hunting with a bow license to carry a handgun unless that person also has a valid deer hunting li-

cense and an unfilled transportation tag that permits a handgun to be used to take deer.

**106.7(7) Discharge of firearms from roadway.** No person shall discharge a shotgun shooting slugs or muzzleloader from a highway during the regular gun seasons in all counties and parts of counties north of U.S. Highway 30. "Highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

ITEM 7. Rescind rule 571—106.8(481A) and adopt the following **new** rule in lieu thereof:

**571—106.8(481A) Procedures to obtain licenses.** All resident deer hunting licenses must be obtained using the electronic licensing system for Iowa (ELSI). Licenses may be purchased from ELSI license agents, or online at [www.iowadnr.com](http://www.iowadnr.com), or by calling the ELSI telephone ordering system.

**106.8(1) Licenses with quotas.** All paid deer hunting licenses for which a quota is established may be obtained from the ELSI system on a first-come, first-served basis beginning August 15 until the quota fills, or through the last day of the hunting period for which the license is valid.

**106.8(2) Licenses without quotas.** All deer hunting licenses that have no quota may be obtained from the ELSI system beginning August 15 through the last day of the hunting period for which a license is valid.

**106.8(3) Providing false information.** Anyone who provides false information about the person's personal identity, eligibility for resident deer licenses, or eligibility for any paid or free landowner/tenant deer license and tag and who attests that the information is correct by accepting and signing the license or tag shall be guilty of a misdemeanor. In addition, the person's hunting license shall be revoked, and the person shall not be issued a hunting license for one year. In addition to any legal penalties that may be imposed, obtaining a license in such a manner shall invalidate that deer license and transportation tag and any other deer hunting license and transportation tag obtained during the same year.

ITEM 8. Amend subrule 106.10(1) as follows:

**106.10(1) Licenses.**

a. Youth deer hunt. A youth deer license may be issued to any Iowa resident who is at least 12 years old but not over 15 years old *on the day the youth obtains the license*. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free *any-deer* license for which the youth's family is eligible. The youth must possess a valid hunter *safety education certificate issued by a state wildlife agency* to obtain a license.

Each participating youth must be accompanied by an adult who possesses a regular hunting license and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in direct company of the youth at all times.

A person may obtain only one youth *paid any-deer* license but may also obtain ~~one~~ of the following additional licenses: *prior to October 1*, one *statewide paid any-deer bow or statewide gun paid any-deer firearm season* license; up to ~~two~~ *three* antlerless-deer-only licenses for the bow, *first or second* regular gun or late muzzleloader season; and up to ~~two~~ *three* antlerless-deer-only licenses for the *special-late January antlerless-deer-only* season. *Beginning October 1*, an *unlimited number of these licenses may be obtained. No person may obtain a paid license of any type for both the first*

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and second regular gun seasons. Beginning November 12, a youth hunter may purchase an unlimited number of licenses for the November antlerless-deer-only season until quotas fill.

b. Severely disabled hunt. Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one statewide any-deer license to hunt deer during the youth season. A person applying for this license must either possess a disabilities parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). Forms are available online at [www.iowadnr.com](http://www.iowadnr.com), by visiting the DNR central office or any district office, or by calling (515)281-5918. A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain one additional statewide paid any-deer bow license and one up to three antlerless-deer-only license licenses for the youth/disabled hunter or bow season.

ITEM 9. Amend subrules 106.12(6) and 106.12(7) as follows:

**106.12(6)** Where free licenses are valid. A free license is valid only on that portion of the farm unit that is in a zone open to deer hunting. "Farm unit" means all parcels of land in tracts of two or more contiguous acres that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant regardless of how that land is subdivided for business purposes. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

**106.12(7)** How many free Number of licenses that may be obtained. The maximum number of free any-deer licenses for the youth/disabled hunter season, bow season, regular gun seasons or muzzleloader seasons is two per farm unit, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one any-deer license. A tenant or the tenant's family is entitled to only one free license even if the tenant farms land for more than one landowner. An additional free license for the special late season may be issued to eligible landowners and tenants as described in subrule 106.1(5). The maximum number of antlerless-deer-only licenses that may be issued is four per farm unit, two for the landowner (or family member) and two for the tenant (or family member). The maximum number of reduced-fee licenses that may be issued per farm unit is four, two for the landowner (or family member) and two for the tenant (or family member). If there is no tenant, the landowner family is limited to one any-deer, two antlerless-deer-only and two reduced-fee licenses. The tenant family is restricted to the number of tenant licenses described above even if the tenant farms land for more than one landowner.

[Filed 6/17/05, effective 8/10/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4305B

### NURSING BOARD[655]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "License to Practice—Registered Nurse/Licensed Practical Nurse," and Chapter 4, "Discipline," Iowa Administrative Code.

These amendments provide for criminal background checks of examination and endorsement applicants and reactivating and disciplined licensees and provide a fee.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on April 13, 2005, as **ARC 4106B**. These amendments are identical to those published under Notice.

These amendments will become effective August 10, 2005.

These amendments are intended to implement the Volunteers for Children Act, Title 42 United States Code Section 5119C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [3.1, 3.4(3), 3.4(4), 3.4(6), 3.4(7), 3.5(2) to 3.5(4), 3.7(5), 4.6(3), 4.11] is being omitted. These amendments are identical to those published under Notice as **ARC 4106B**, IAB 4/13/05.

[Filed 6/16/05, effective 8/10/05]

[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

## ARC 4304B

### NURSING BOARD[655]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "License to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment increases the license renewal fee by \$21 (\$7 for each year covered by the license) for a total fee of \$120 for a three-year period.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on April 13, 2004, as **ARC 4105B**. This amendment is identical to that published under Notice.

This amendment will become effective August 10, 2005.

This amendment is intended to implement Iowa Code section 147.80.

The following amendment is adopted.

Amend rule **655—3.1(17A,147,152,272C)**, definition of "fees," numbered paragraph "**8**," as follows:

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8. For the renewal of a license to practice as a registered nurse/licensed practical nurse, \$99 *120* for a three-year period.

[Filed 6/16/05, effective 8/10/05]  
[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4302B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners adopts amendments to Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," Chapter 32, "Continuing Education for Marital and Family Therapists and Mental Health Counselors," and Chapter 34, "Fees," Iowa Administrative Code.

These amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 13, 2005, as **ARC 4092B**. A public hearing was held on May 3, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

These amendments were adopted by the Board of Behavioral Science Examiners on June 10, 2005.

These amendments will become effective August 10, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [31.1, 31.8, 31.10 to 31.12, 31.15 to 31.17, 32.1 to 32.11, 34.1(4) to 34.1(6)] is being omitted. These amendments are identical to those published under Notice as **ARC 4092B**, IAB 4/13/05.

[Filed 6/15/05, effective 8/10/05]  
[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

## ARC 4303B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners adopts amendments to Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," and Chapter 33, "Discipline for Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

These amendments adopt new rule 645—31.18(154D), which defines services subject to regulation, delete from subrule 31.2(3) a reference to the form in which a fee is to be paid, add individuals to the list of groups for which practitioners may receive credit for supervision hours, substitute an acronym for the complete name of the organization referenced in subrule 31.3(1), and add new subrule 33.2(31), which provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 13, 2005, as **ARC 4093B**. A public hearing was held on May 3, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

These amendments were adopted by the Board of Behavioral Science Examiners on June 10, 2005.

These amendments will become effective August 10, 2005.

These amendments are intended to implement Iowa Code chapters 147, 154D and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [31.2(3), 31.2(8), 31.3(1), 31.5(1), 31.6(2), 31.7(3), 31.18, 33.2(31)] is being omitted. These amendments are identical to those published under Notice as **ARC 4093B**, IAB 4/13/05.

[Filed 6/15/05, effective 8/10/05]  
[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

## ARC 4296B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners adopts amendments to Chapter 81, "Licensure of Dietitians," Chapter 82, "Continuing Education for Dietitians," and Chapter 84, "Fees," Iowa Administrative Code.

These amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 30, 2005, as **ARC 4072B**. A public hearing was held on April 19, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

These amendments were adopted by the Board of Dietetic Examiners on June 3, 2005.

These amendments will become effective August 10, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 152A and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [81.1, 81.7, 81.9, 81.10, 81.13 to 81.16, 82.1 to 82.11, 84.1] is being omitted. These amendments are identical to those published under Notice as **ARC 4072B**, IAB 3/30/05.

[Filed 6/15/05, effective 8/10/05]  
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[For replacement pages for IAC, see IAC Supplement 7/6/05.]

**ARC 4297B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners hereby amends Chapter 83, "Discipline for Dietitians," Iowa Administrative Code.

New subrule 83.2(31) provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 30, 2005, as **ARC 4073B**. A public hearing was held on April 19, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

This amendment was adopted by the Board of Dietetic Examiners on June 3, 2005.

This amendment will become effective August 10, 2005.

This amendment is intended to implement Iowa Code chapters 21, 147, 152A and 272C.

The following amendment is adopted.

Adopt the following **new** subrule:

**83.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[Filed 6/15/05, effective 8/10/05]  
[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

**ARC 4300B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners adopts amendments to Chapter 101, "Licensure of Funeral Directors," Chapter 102, "Continuing Education for Funeral Directors," and Chapter 105, "Fees," Iowa Administrative Code.

These amendments define licensure status as active or inactive, define the process for licensure reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 13, 2005, as **ARC 4101B**. A public hearing was held on May 10, 2005, from 9:30 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comments noted the need to retain rules 101.12(147), reissued certificate and wallet cards, and 101.13(272C), renewal of a funeral establishment license or cremation establishment license, that were proposed to be rescinded; to retain the requirement that, for reactivation, a licensee must pass the Iowa law and rules examination; and to account for the funeral establishment license in rule 101.19(17A,147,272C). The amendments were changed to reflect these public comments.

Item 8 in the Notice, which proposed to rescind rules 101.12(147) and 101.13(272C), was not adopted.

In subrule 101.18(3), paragraphs "a" and "b," a new subparagraph (3) was added and reads as follows:

"(3) Verification of successful passage of the Iowa law and rules examination with a score of at least 75 percent."

A new sentence was added to rule 101.19(17A,147,272C) and the rule now reads as follows:

**"645—101.19(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 101.18(17A,147,272C) prior to practicing as a funeral director in this state. The owner of a funeral home establishment whose establishment license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the establishment license and must apply for and be granted reactivation of the establishment license prior to reopening the funeral home establishment."

These amendments were adopted by the Board of Mortuary Science Examiners on June 9, 2005.

These amendments will become effective August 10, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [101.1, 101.8(10), 101.10, 101.14, 101.15, 101.18, 101.19, 102.1 to 102.11, 105.1(4) to

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

105.1(6)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4101B**, IAB 4/13/05.

[Filed 6/15/05, effective 8/10/05]  
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[For replacement pages for IAC, see IAC Supplement 7/6/05.]

## ARC 4301B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners adopts amendments to Chapter 101, "Licensure of Funeral Directors," and Chapter 103, "Disciplinary Proceedings," Iowa Administrative Code.

Amendments remove the payment mechanism in subrule 101.2(3); clarify examination, licensure by endorsement and internship requirements; and provide the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 13, 2005, as **ARC 4102B**. A public hearing was held on May 10, 2005, from 9:30 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comments received noted that: in subrule 101.4(1) the word "both" needed to be added prior to the words "the arts and science portion" and the word "portion" needed to be made plural; in paragraph 101.5(1)"a," the word "Iowa" should be added before "board-certified preceptor"; and in subrule 101.8(6) the proposed addition of an administrative rule reference should not be adopted. Changes were made accordingly.

In addition, changes were made to proposed Item 5 to improve readability of the rule. A sentence from former subrule 101.8(9) is incorporated in the introductory paragraph of rule 101.8(156), and subrule 101.8(9) is rescinded.

These amendments were adopted by the Board of Mortuary Science Examiners on June 9, 2005.

These amendments will become effective August 10, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 101.2(3) as follows:

**101.2(3)** Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Mortuary Science Examiners. The fees are nonrefundable.

ITEM 2. Amend subrules 101.4(1) and 101.4(2) as follows:

**101.4(1)** The board shall accept a certificate of examination issued by the International Conference of Funeral Service Examining Boards, Inc., indicating a passing score on both the arts and sciences portions of the examination.

**101.4(2)** Applicants Prior to being registered as an intern in Iowa, an applicant shall be required to pass an examination covering the Iowa law and rules for mortuary science

prior to being licensed in Iowa. A 75 percent score shall be required for passing of this examination.

ITEM 3. Amend subrule **101.5(1)**, paragraph "a," as follows:

a. The intern must serve a minimum of one year of internship in Iowa under the direct supervision of a an Iowa board-certified preceptor. The beginning and ending dates of the internship shall be indicated on the internship certificate. The intern shall engage in the practice of mortuary science only during the time indicated on the internship certificate. The intern must be approved and licensed following a successful internship before the intern may practice mortuary science.

ITEM 4. Amend rule 645—101.8(156) as follows:

Amend the introductory paragraph as follows:

**645—101.8(156) Licensure by endorsement.** An applicant who has been a licensed funeral director under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. *Applicants licensed before 1980 are exempt from showing a passing grade on the national board examination.* The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

Amend subrule 101.8(6) as follows:

**101.8(6)** Successful passage of ~~Successfully passes~~ the Iowa law and rules examination with a score of at least 75 percent;

Rescind subrule **101.8(9)** and renumber subrule **101.8(10)** as **101.8(9)**.

ITEM 5. Adopt new subrule 103.3(13) as follows:

**103.3(13)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[Filed 6/15/05, effective 8/10/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4298B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy adopts amendments to Chapter 131, "Licensure of Massage Therapists," Chapter 133, "Continuing Education for Massage Therapists," and Chapter 135, "Fees," Iowa Administrative Code.

These amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 27, 2005, as **ARC 4120B**. A public hearing was held on May 17, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Of-

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

office Building. No public comments were received. These amendments are identical to those published under Notice.

These amendments were adopted by the Board of Examiners for Massage Therapy on June 7, 2005.

These amendments will become effective August 10, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 131, 133, 135] is being omitted. These amendments are identical to those published under Notice as **ARC 4120B**, IAB 4/27/05.

[Filed 6/15/05, effective 8/10/05]

[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

**ARC 4299B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy adopts amendments to Chapter 131, "Licensure of Massage Therapists," Chapter 133, "Continuing Education for Massage Therapists," and Chapter 134, "Discipline for Massage Therapists," Iowa Administrative Code.

These amendments adopt a new subrule 134.2(31), which provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee; redefine the examination requirements; allow for a student-submitted transcript when a school has closed; rescind continuing education criteria and adopt new continuing education criteria; and address changes in the criteria for a temporary license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 27, 2005, as **ARC 4119B**. A public hearing was held on May 17, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comment received noted that the specific criteria outlined in subrule 133.3(3) were complex and needed to be simpler to facilitate licensees' understanding and that the number of required hours did not need to be increased. In addition, comments were received that the language specifying the changes to the required number of continuing education hours and to the associated specific criteria should be modified to accommodate the license renewal period. The Board simplified the specific criteria to make them easier to understand. The Board also reviewed the required number of continuing education hours published in the Notice. In comparing Iowa to other states, the Board found that Iowa's requirements for hours of continuing education were low compared to other states and that the proposed change would raise Iowa's number of continuing education hours to the average number of hours required by other states. As a result, the Board adopted the number of continuing education hours as proposed in the Notice. Language to accommodate

the licensure renewal cycle was also modified in response to comments received.

These amendments were adopted by the Board of Examiners for Massage Therapy on June 7, 2005.

These amendments will become effective August 10, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 131.2(4) as follows:

**131.2(4)** The applicant shall have official copies of academic transcripts sent directly from the board-approved school to the board of examiners for massage therapy. *If a school has closed and is no longer operational, the board will accept an official transcript provided by the student.*

ITEM 2. Amend subrule 131.2(6), introductory paragraph, as follows:

**131.2(6)** The applicant shall submit proof of completion of a cardiopulmonary resuscitation (CPR) course and a first-aid course that were certified by the American Red Cross or, by the American Heart Association, *or by the National Safety Council*. One of the following shall be required:

ITEM 3. Amend subrule 131.2(7) as follows:

**131.2(7)** The applicant shall provide proof of passing the ~~National Certification Examination for Therapeutic Massage and Bodywork administered by the testing service contracting with the~~ *any* National Certification Board for Therapeutic Massage and Bodywork (*NCBTMB*) examination. Proof of passing shall be sent directly from the testing service to the board of examiners for massage therapy. The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered.

ITEM 4. Amend the introductory paragraph of rule 645—131.4(152C) as follows:

**645—131.4(152C) Examination requirements.** The examination required by the board shall be the ~~National Certification Examination for Therapeutic Massage and Bodywork examination required pursuant to subrule 131.2(7)~~.

ITEM 5. Rescind rule 645—131.5(152C) and adopt the following new rule in lieu thereof:

**645—131.5(152C) Temporary licensure of a licensee from another state.**

**131.5(1)** A temporary license may be issued to an applicant who holds a current license from another state with lower licensure requirements than those in Iowa. The applicant shall:

- a. Submit to the board a completed application;
- b. Pay the licensure fee;
- c. Provide proof of completion of a cardiopulmonary resuscitation (CPR) course and a first-aid course that were certified by the American Red Cross, the American Heart Association, or the National Safety Council. One of the following shall be required:

(1) An official transcript documenting completion of a CPR class and a first-aid class within one year prior to submitting the application for licensure; or

(2) A copy of the current certification card(s) or renewal card(s);

d. Provide proof of passing any NCBTMB examination, to be sent directly from the NCBTMB to the board office, if applicable;

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

e. Provide official verification of license(s) from every state in which the applicant has been licensed, to be sent directly from the state(s) to the board office;

f. Submit a plan for meeting the board's requirements for licensure within one year of the issuance of the temporary permit. Such plan shall include proof of enrollment in a school of massage therapy whose curriculum has been approved by the board, the date of enrollment, and the expected date of graduation.

**131.5(2)** A temporary license shall be valid for a period of up to one year and shall not be renewed.

**131.5(3)** The applicant shall be issued a permanent license upon receipt of a transcript of completion from a board-approved school sent directly from the school, and proof of passing any NCBTMB examination sent directly from the NCBTMB to the board office.

**131.5(4)** There is no additional fee for converting a temporary license to a permanent license.

ITEM 6. Amend rule 645—133.2(152C), introductory paragraph and subrules 133.2(1) and 133.2(2), as follows:

**645—133.2(152C) Continuing education requirements.** *Each biennium, each person who is licensed to practice as a massage therapist in this state shall be required to complete a minimum of 12 hours of continuing education approved by the board. Beginning with licensees whose licenses are due to expire August 15, 2006, or thereafter, each person who is licensed to practice as a massage therapist in this state shall be required to complete a minimum of 24 hours of continuing education per biennium.*

**133.2(1)** The biennial continuing education compliance period shall be run concurrently with each renewal period. ~~Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 12 hours of continuing education approved by the board.~~

**133.2(2)** Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. ~~The new licensee will be required to complete a minimum of 12 hours of continuing education per biennium for each subsequent license renewal.~~

ITEM 7. Amend rule 645—133.3(152C), catchwords, as follows:

**645—133.3(152C,272C) Standards for approval.**

ITEM 8. Amend subrule 133.3(1), introductory paragraph and paragraph "c," as follows:

**133.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if ~~it is determined by the board that~~ the continuing education activity:

c. *Is sponsored by a local, state, national or international professional organization or chapter of massage/bodywork therapy, or a professional hands-on school of massage/bodywork therapy that meets or exceeds the standards set forth in 645—Chapter 132. The presenter must be a massage/bodywork therapist with a minimum of five years of clinical experience in massage/bodywork therapy. ~~Is conducted by individuals who~~ Individuals conducting the continuing education activity must have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. ~~The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule,~~*

~~goals and objectives.~~ *At the time of audit, the board may request the qualifications of presenters;*

ITEM 9. Amend subrule **133.3(1)**, paragraph "e," subparagraphs (2) and (3), as follows:

(2) Number of program contact hours (~~One contact hour equals one hour of continuing education credit.~~); and

(3) ~~Official signature or verification by program sponsor~~ *Certificate of completion or evidence of successful completion of the course from the course sponsor.*

ITEM 10. Amend subrule 133.3(2), introductory paragraph, as follows:

**133.3(2)** *Specific criteria for licensees whose licenses expire on or before July 15, 2006. This subrule applies to licensees whose licenses are due to expire on or before July 15, 2006. Beginning with licensees whose licenses are due to expire August 15, 2006, or thereafter, each person who is licensed to practice as a massage therapist in this state shall be required to complete a minimum of 24 hours of continuing education per biennium as specified in subrule 133.3(3).*

ITEM 11. Adopt the following **new** subrule:

**133.3(3)** Specific criteria for licensees whose licenses expire on or after August 15, 2006. A licensee shall obtain a minimum of 24 hours of continuing education credit per biennium.

a. At least 12 hours shall be obtained by attending programs which pertain to massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including, but not limited to, myofascial release, craniosacral, neuromuscular therapy, stretching techniques, hands-on hydrotherapy techniques, structural integration, medical massage techniques, chair massage, infant massage, prenatal massage, sports massage, shiatsu, acupressure, tui na, manual lymphatic drainage, hands-on Eastern techniques, and zero balancing.

b. A licensee may obtain continuing education in content areas that are programs of learning which contribute directly to the professional competency of the licensee and which may include alternative therapy techniques. Programs listed as exclusions in 133.3(3)"c" are not included.

c. Excluded content areas for continuing education include but are not limited to meditation, feng shui, communication, insurance, personal development, nutrition, yoga, collective bargaining, and community service.

d. A licensee may receive credit on a one-time basis, not to exceed two hours of continuing education credit per biennium, for delivery of course(s) in a massage school setting, if the following criteria are met:

(1) The course(s) is part of a curriculum approved by the board as outlined in 645—132.4(152C);

(2) The licensee is qualified to teach the course(s) as outlined in 645—132.3(152C);

(3) The school provides an official written statement which verifies the following:

1. Course title and number of course hours;
2. Inclusive dates the course was taught by the licensee;
3. Teaching qualifications of the licensee.

e. For programs of learning necessary to meet mandatory reporter training requirements and CPR/first-aid recertification, only the number of hours obtained during the biennium renewal period may be utilized toward meeting the continuing education requirement; no hours shall be carried over into the next biennium.

ITEM 12. Adopt the following **new** subrule:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**134.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[Filed 6/15/05, effective 8/10/05]

[Published 7/6/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/6/05.

## ARC 4283B

### REAL ESTATE COMMISSION[193E]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 543B.9 and 543B.18, the Real Estate Commission hereby adopts new Chapter 21, "Enforcement Proceedings Against Unlicensed Persons," Iowa Administrative Code.

Notice of Intended Action was published March 16, 2005, as **ARC 4052B**. A public hearing on the proposed amendment was held at 10 a.m. on April 5, 2005. No one attended the meeting, and no written comments were received.

These new rules were recommended by the Assistant Attorney General assigned to real estate and are intended to clarify and establish procedures for the investigation, hearing, and enforcement of violations of Iowa Code section 543B.1.

This amendment is identical to that published under Notice of Intended Action.

These rules will become effective August 10, 2005.

These rules are intended to implement Iowa Code chapters 17A and 543B.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 21] is being omitted. These rules are identical to those published under Notice as **ARC 4052B**, IAB 3/16/05.

[Filed 6/6/05, effective 8/10/05]

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[For replacement pages for IAC, see IAC Supplement 7/6/05.]

## ARC 4284B

### REGENTS BOARD[681]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby amends Chapter 4, "Traffic and Parking at Universities," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 13, 2005, as **ARC 4111B**. A comment period was established and ended May 3, 2005. No comments were received. These amendments are identical to those published under Notice.

These amendments were approved during the June 13, 2005, meeting of the Board of Regents.

These amendments are intended to implement Iowa Code chapter 262.

These amendments will become effective on August 10, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [4.30(5), 4.31(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 4111B**, IAB 4/13/05.

[Filed 6/17/05, effective 8/10/05]

[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

## ARC 4306B

### REVENUE DEPARTMENT[701]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 434.11, the Department of Revenue hereby adopts amendments to Chapter 76, "Determination of Value of Railroad Companies," Iowa Administrative Code.

These amendments make changes in the stock and debt, income, and cost approaches to value that are used by the Department in establishing railroad company valuations for property tax purposes.

Notice of Intended Action was published in IAB Vol. XXVII, No. 23, p. 1467, on May 11, 2005, as **ARC 4172B**.

These amendments are identical to those published under Noticed of Intended Action.

These amendments will become effective August 10, 2005, after filing with the Administrative Rules Coordinator and publication in the Iowa Administration Bulletin.

These amendments are intended to implement Iowa Code chapter 434.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [76.1, 76.4, 76.5, 76.7, 76.9] is being omitted. These amendments are identical to those published under Notice as **ARC 4172B**, IAB 5/11/05.

[Filed 6/17/05, effective 8/10/05]

[Published 7/6/05]

[For replacement pages for IAC, see IAC Supplement 7/6/05.]

## ARC 4287B

### TRANSPORTATION DEPARTMENT[761]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 15, 2005, adopted an amendment to Chapter 500, "Interstate Registration and Operation of Vehicles," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

Notice of Intended Action for this amendment was published in the May 11, 2005, Iowa Administrative Bulletin as **ARC 4151B**.

2005 Iowa Acts, House File 216, section 41, changed the length of temporary authority for registration from 90 days to 60 days. This amendment reflects this change.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 326.

This amendment will become effective August 10, 2005. Rule-making action:

Amend rule 761—500.9(326) as follows:

**761—500.9(326) Fleet additions and temporary authority.** A registrant may submit a vehicle schedule to change the fleet operations. A temporary authority may be issued to op-

erate a vehicle(s) for the period of time required to process the vehicle schedule. The temporary authority shall not exceed ~~90~~ 60 days. However, at the discretion of the permitting authority, the ~~90-day~~ 60-day temporary authority may be extended if there are extenuating circumstances. Once temporary authority is generated and used, fees shall be due and the invoice may only be canceled if an error was made by the department or there were extenuating circumstances for which nonuse can be proven.

This rule is intended to implement Iowa Code section 326.11 *as amended by 2005 Iowa Acts, House File 216, section 41*.

[Filed 6/15/05, effective 8/10/05]

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**IOWA ADMINISTRATIVE BULLETIN**  
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